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**Affidavit of Louis W. Alexander, Assistant Director of
Division of Transportation of State Board of Education**
(Referred to in Foregoing Tender of Evidence)

LOUIS W. ALEXANDER, being duly sworn, deposes and says that:

1. I am Assistant Director of the Division of Transportation of the North Carolina State Board of Education, a position which I have held for the past three years. For the preceeding fifteen years, I was School Bus Route Supervisor for the Western Area of North Carolina (which included Mecklenburg County) and as such was responsible to the Division of Transportation of the North Carolina State Board of Education.

2. In the performance of the duties and responsibilities of my present position, I am familiar with school bus transportation systems throughout the state, with the procurement and operation of school buses and other facilities, with bus routes and schedules, with state laws concerning transportation of school children, safety requirements and standards, and with the various other things that relate to the transportation of school children in North Carolina.

3. I have carefully analyzed the affidavit of J. D. Morgan, Assistant Superintendent for Business Services of the Charlotte-Mecklenburg Public Schools (dated February 13, 1970) and the facts and information set forth therein. I have personally conferred with Mr. Morgan and members of his staff regarding the Pupil Assignment Plans referred to in his affidavit—particularly as they affect the transportation of school children, bus routes and schedules, transportation costs, availability of facilities and the many

*Affidavit of Louis W. Alexander, Assistant Director of
Division of Transportation of State Board of Education*

other facets involved in the movement of a great number of children in the Charlotte-Mecklenburg School System. I have examined the maps showing the assignment proposals under the Board Plan and the Finger Plan and all locations of the schools with particular attention to the transportation that would be required to implement either of these plans.

4. Based upon my experience with school transportation systems in this state (particularly Mecklenburg County) in my judgment, the statements made by Mr. Morgan in his affidavit are sound and well considered. In making my evaluation of these facts and statements, I have, of course, relied upon the data and information furnished me regarding the number of additional children to be transported and the school bus routes to implement either of the two plans. However, I received from Mr. Morgan and his staff, a detailed explanation of the basis upon which the data and information set forth in his affidavit were computed and the many factors which were taken into account. Mr. Morgan's statements regarding the number of buses and other facilities that are required, the length and time of bus routes, the capital and operating expenses, the utilization of equipment, safety factors and other related matters are well in line with what I would expect.

5. In my opinion, the addition of any significant number of buses (irrespective of which plan is used) would create an intolerable situation not only for the Charlotte-Mecklenburg Schools but the public as well. In the operation of any school bus program, the *safety* and well-being of the children are our primary concerns. Even if the buses and

*Affidavit of Louis W. Alexander, Assistant Director of
Division of Transportation of State Board of Education*

drivers were available, the busing of children into and out of the center of the city along streets and highways already jammed with heavily congested traffic is unwise and unsafe. This is true whether student or adult drivers are used. I would particularly emphasize the difficulties and hazards involved where there are insufficient or inadequate bus parking and other loading and unloading facilities.

LOUIS W. ALEXANDER

6. The above observations were made upon the request of Mr. J. D. Morgan, Assistant Superintendent and Mr. Benjamin S. Horack, Board Attorney.

Louis W. Alexander

(Sworn to February 17, 1970)

**Affidavit of Herman J. Hoose, Director of Traffic
Engineering for the City of Charlotte, North Carolina**
(Referred to in Foregoing Tender of Evidence)

HERMAN J. HOOSE, being duly sworn, deposes and says that:

1. I am now, and have been for the past 22 years, Director of Traffic Engineering for the City of Charlotte. I am charged with primary responsibility for all matters relating to traffic on city streets and thoroughfares. By reason of my position, I also thoroughly familiar with matters relating to traffic in the portions of Mecklenburg County located outside the city limits. The direction and control of inner city traffic must be and is carefully coordinated with that of the outlying areas.

2. I have carefully reviewed with Mr. J. D. Morgan, Assistant Superintendent for Business Services of the Charlotte-Mecklenburg Public Schools, his affidavit (dated February 13, 1970) relating to the transportation requirements of the Board Plan and the Court approved Finger Plan referred to in that affidavit—particularly as they would affect traffic patterns, facilities and safety within the City of Charlotte.

3. The peak traffic rush hours in Charlotte are from 7:30 to 9:30 in the morning and from 4:30 to 6:30 in the evening. As is true with most other cities, the control and movement of vehicular traffic along our already over burdened streets and thoroughfares constitutes one of our most critical problems.

4. The main traffic arteries in the city (as well as those in the perimeter) are already jammed almost to the break-

Affidavit of Herman J. Hoose, Director of Traffic Engineering for the City of Charlotte, North Carolina

ing point. Consistent with vehicular and pedestrian safety (which, of course, must be our primary concern), it is the objective of my Department to devise traffic patterns and controls that will expedite the orderly movement and flow of traffic within the city. The addition of a large number of school buses to the congested inner city thoroughfares would occasion serious problems—both from the standpoint of traffic movement and safety.

5. By State law a loaded school bus cannot be operated on a public street or road at a speed in excess of 35 miles per hour. Many of our inner city traffic arteries prescribe a 40 or 45 mile maximum in order to speed up the movement of traffic. The cross-bussing and satellite bussing required of the Court's Finger Plan will necessarily require the school buses to use these thoroughfares. This would make a shambles out of our city traffic—particularly during the morning rush hours and, if staggered school schedules involve bussing after 4:30 p.m., during the evening rush hour as well. We have some expressways in the city that prescribe maximum speeds of 55 or 60 miles per hour. In my judgment it would be completely impractical to expect to allow school buses to use these expressways. Under State law traffic must stop while a school bus is loading or unloading children. To the extent that pickup and discharge points are located on public streets and roads, the movement of traffic would come to a complete standstill. This will create an intolerable situation. Stop-and-go traffic of slow moving school buses in congested traffic would constitute a real danger for both the school buses and other traffic. From a safety standpoint, children will be particularly vulnerable at the points where they are picked up and

Affidavit of Herman J. Hoose, Director of Traffic Engineering for the City of Charlotte, North Carolina

dropped off by school buses. This hazard can be minimized to the extent that school buses load and unload children on school grounds or other off street locations. However, it is anticipated that many of the pickup and dropoff points would be on streets which children reach only by crossing busy streets and intersections and where children will congregate to board or get off the school buses.

6. Of special concern to my Department would be the problems caused by the entry of loaded school buses into the main traffic arteries from secondary and residential streets—particularly during rush hour traffic. Police or traffic controls (which frequently would not otherwise be needed) would be required at these intersections to reduce the hazards occasioned by the entry of the buses into the mainstream of traffic. This in turn will further slow down traffic and clog the already over burdened thoroughfares of the city. Similar problems will exist where loaded school buses enter and leave bus parking areas.

7. It is anticipated that the difficulties involved in the movement of large numbers of children within the city by bus will be further compounded by the increased congestion that will result on bad weather days when parents will forego the use of school buses and will drive their children to school in the morning and pick them up at school in the afternoon.

8. Traffic safety and control will be seriously impaired by any program of mass bussing of school children within the City of Charlotte. Substantially similar problems would be encountered outside the city—although perhaps not as

*Affidavit of Herman J. Hoose, Director of Traffic
Engineering for the City of Charlotte, North Carolina*

acute where the buses are able to use secondary roads that run through the less densely populated areas of the county. The Charlotte-Mecklenburg Public Schools already operate a large bus fleet to provide the transportation that the State law requires. This existing bussing occasions many problems—which should not be unnecessarily aggravated by additional movement of a large number of children as will be required to implement the plans referred to in Mr. Morgan's affidavit.

/s/ HERMAN J. HOOSE
Herman J. Hoose

(Sworn to February 24, 1970)

**Affidavit of Robert L. Deaton, Assistant General
Manager of Charlotte City Coach Lines, Inc.**

(Referred to in Foregoing Tender of Evidence)

ROBERT L. DEATON, being first duly sworn, says that:

1. I am the Assistant General Manager and an officer of Charlotte City Coach Lines, Inc., which operates the public transit system in the City of Charlotte. We operate under an exclusive franchise granted by the City of Charlotte which permits us to furnish our regular service within the City and the two mile perimeter beyond the city limits. We also hold a Certificate issued by the North Carolina Utilities Commission which permits us to operate a charter or contract service anywhere in Mecklenburg County.

2. At present Charlotte City Coach Lines has a fleet of 128 busses. 114 of the busses are required to furnish the normal transportation needs of the public. Of the remaining 14 busses, 2 are already under contract commitments and 7 more must be kept in reserve as replacement spares when busses used for our regular service break down or are in need of repairs. We should keep at least 10% of our fleet available for replacement spares. Therefore, a replacement reserve of only 7 busses is substantially less than what we normally consider to be our minimum needs in this respect. With our present fleet, 5 busses are the maximum that we could make available on a contract basis to provide transportation for school children. The largest bus in our fleet has a seating capacity for 53 adults. By utilizing standing room in the aisles, we anticipate that each of the busses could transport 65 school children or a total of 325 for the 5 busses that would be

*Affidavit of Robert L. Deaton, Assistant General
Manager of Charlotte City Coach Lines, Inc.*

available. Some additional children could be transported by the use of these busses if the opening and closing hours of the various schools are staggered so that we can make greater use of our equipment by permitting one bus to serve more than one school.

3. The busses we have in our fleet cost approximately \$38,000 to \$39,000 each. It is not economically feasible for us to expand our fleet by the addition of more busses for the sole purpose of providing transportation for school children in the mornings and afternoons of school days. Further, it takes some 8 to 10 months to obtain delivery of a new bus. Nor is it economically feasible for us to supplement our fleet by the acquisition of used busses, since our experience indicates that the maintenance cost of such busses is prohibitive.

4. We would be willing to negotiate with the Charlotte-Mecklenburg Schools on a contract basis for the use of these 5 available busses to transport school children. As fixed by the North Carolina Utilities Commission, our normal contract rate per bus is \$18.00 per hour (or fraction) for the first hour and \$10.00 for each additional hour (or fraction). Our hourly rates are charged from the time a bus leaves its garage until it returns. Although we do not now know the specifics of the proposed school routes which might be served by our busses on a contract basis, we anticipate that the time of a morning or afternoon run would be about 30 minutes for the short urban routes and 1 hour and 15 minutes or more for the longer routes out in the County. We might be able to negotiate some reductions in our normal contract rates. However,

*Affidavit of Robert L. Deaton, Assistant General
Manager of Charlotte City Coach Lines, Inc.*

we will be unable to do so until we know what the routes and schedules will be and anticipate that (after we are advised of the children to be transported) we will need about 3 weeks to analyze the routes before coming up with a rate proposal. Any contract rates which may be negotiated with the Schools must be approved by the North Carolina Utilities Commission.

/s/ ROBERT L. DEATON
Robert L. Deaton

(Sworn to February 10, 1970.)

Order

(Filed February 25, 1970)

Upon motion duly made, It is HEREBY ORDERED that the following persons and organizations described in the petition of the plaintiffs as additional parties-defendant be, and they are hereby made parties herein:

HONORABLE ROBERT W. SCOTT, Governor of the State of North Carolina

HONORABLE A. C. DAVIS, Controller of the State Department of Public Instruction

HONORABLE WILLIAM K. McLEAN, Judge of the Superior Court of North Carolina

TOM B. HARRIS, Charlotte, North Carolina

G. DON ROBERSON, Charlotte, North Carolina

A. BREECE BRELAND, Charlotte, North Carolina

JAMES M. POSTELL, Charlotte, North Carolina

WILLIAM E. RORIE, JR., Charlotte, North Carolina

CHALMERS R. CARR, Charlotte, North Carolina

ROBERT T. WILSON, Charlotte, North Carolina

CONCERNED PARENTS ASSOCIATION, an unincorporated association in Mecklenburg County, North Carolina

JAMES H. CARSON, JR., Attorney, Charlotte, North Carolina

WILLIAM H. BOOE, Attorney, Charlotte, North Carolina

It is directed that service of the following documents be made immediately by certified mail, return receipt requested, upon the additional parties hereby made:

1. MOTION TO ADD ADDITIONAL PARTIES DEFENDANT AND FOR FURTHER RELIEF, with attached POINTS OF AUTHORITY, served by plaintiffs on February 13, 1970.

Order

2. NOTIFICATION AND REQUEST FOR DESIGNATION OF THREE-JUDGE COURT, dated February 19, 1970, including exhibits referred to therein, as follows:

Exhibit A—OPINION AND ORDER filed December 1, 1969.

Exhibit B—ORDER filed February 5, 1970.

Exhibit C—ORDER filed December 2, 1969.

Exhibit D—Complaint, amended complaint and two orders entered by Judge William K. McLean on February 12, 1970, in suit pending in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, bearing No. 70-CVS-1097.

Exhibit E—Statement made by Governor Robert W. Scott on February 11, 1970.

Exhibit F—Letter dated February 12, 1970, written by Governor Robert W. Scott to Dr. W. L. Turner, Director of the North Carolina Department of Administration.

Exhibit G—Statement made by Dr. A. Craig Phillips on February 11, 1970.

3. DESIGNATION OF THREE-JUDGE COURT, filed February 24, 1970.

The plaintiffs are directed to prepare and file on or before Monday, March 2, 1970, proposed findings of fact and conclusions of law and a proposed order, and a brief in support of their position.

903a

Order

The other parties are directed to prepare and file on or before Friday, March 6, 1970, proposed findings of fact and conclusions of law and a proposed order, and a brief in support of their position.

If there is any additional evidence which any party desires to introduce by deposition or affidavit, the court will receive such evidence, in written form, up to and including Friday, March 6, 1970. It is not contemplated that any more oral testimony in a court hearing will be necessary.

The hearing before the three-judge court will not be an evidentiary hearing, but will be a hearing based upon the record which has been developed by the time of the hearing.

This the 25th day of February, 1970.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

A True Copy

TESTE:

THOS. E. RHODES, Clerk

By: Mildred L. Loozer
Deputy Clerk

Notice of Appeal
(Filed February 25, 1970)

Notice is hereby given that the Charlotte-Mecklenburg Board of Education, a public body corporate; William E. Poe, Henderson Belk, Dan Hood, Ben F. Huntley, Betsy Kelly, Sam McNinch, III and Carlton G. Watkins, defendants above named hereby appeal to the United States Court of Appeals for the Fourth Circuit from the following orders entered in this action on the dates indicated:

Opinion and Order dated April 23, 1969,

Two Orders dated June 4, 1969,

Opinion and Order dated June 20, 1969,

Order dated August 15, 1969,

Order dated August 29, 1969,

Order dated October 10, 1969,

Order dated November 7, 1969,

Opinion and Order dated December 1, 1969,

Order dated December 2, 1969, and

Order dated February 5, 1970,

together with the findings of fact and conclusions of law relied upon by the Court in support of the foregoing orders.

905a

Notice of Appeal

This 25th day of February, 1970.

WILLIAM J. WAGGONER
William J. Waggoner
Weinstein, Waggoner, Sturges, Odom
and Bigger
1100 Barringer Office Tower
Charlotte, North Carolina

BENJ. S. HORACK
Benj. S. Horack
Ervin, Horack and McCartha
806 East Trade Street
Charlotte, North Carolina

Attorneys for Defendants

**Motion to Add Additional Parties Defendant and
For Further Relief**

(Filed February 27, 1970)

On February 5, 1970, this Court directed that the Charlotte-Mecklenburg Board of Education and other defendants proceed immediately with a plan for complete desegregation of the Charlotte-Mecklenburg Schools. On February 26, 1970, this Court entered an order adding additional parties and directing that they show cause why they should not be enjoined from interfering with or otherwise preventing the implementation of the February 5 order. The additional parties defendant had taken steps and conspired to thwart, inhibit and in any way frustrate the orders of this Court. Some of the additional parties defendant had secured patently illegal orders from the State Superior Court purportedly enjoining implementation of the orders of this Court.

On Sunday night, February 22, at approximately 10:16 p.m., a time when plaintiffs understand the courts of this State are normally closed for business purposes, approximately 50 people, some of whom have now been added as parties defendant, filed in the Superior Court of Mecklenburg County another complaint seeking to enjoin implementation of the orders of this Court. They secured from the Honorable Frank Snapp, Resident Judge of the Superior Court of Mecklenburg County, an order purportedly enjoining the Charlotte-Mecklenburg School Board from instituting or implementing or putting into effect the order of this Court. The order of the Superior Court of Mecklenburg County was dated Sunday, February 22, 1970 and was filed in the Superior Court of Mecklenburg County on the same date at 10:16 p.m. This is the third order of the Mecklenburg County Superior Court seeking to frus-

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trate and to prevent implementation of the orders of this Court. With full knowledge of the lack of jurisdiction of the Superior Court to enjoin orders of the Federal Court declaring constitutional rights, Superior Courts of the State have repeatedly entered such orders and, plaintiffs are advised and so allege, will continue to do so unless and until enjoined by this Court.

It is clear that the plaintiffs involved in the proceeding in the Superior Court of Mecklenburg County and the Superior Court well knew the lack of jurisdiction of the Superior Court to restrain or enjoin orders entered by this Court. The timing of the order, the continued efforts of the plaintiffs in that proceeding clearly show the ingenuous efforts of the parties in those proceedings to attempt to frustrate, inhibit and prevent the implementation of the orders of this Court.

At great expense, plaintiffs have sought to secure the enjoyment of their rights as protected and secured by the Constitution of the United States. At great expense, plaintiffs have been harassed, intimidated and threatened because of their efforts to enjoy their rights. The efforts of the parties in the proceedings in the Superior Court of Mecklenburg County and of the parties added as defendants by this Court having inhibited and frustrated the efforts not only of the black students in this System to enjoy constitutionally protected rights but have similarly frustrated the efforts of black teachers and school personnel. Black teachers and school personnel have been threatened and intimidated by said parties solely as an effort to prevent implementation of the orders of this Court. Only unless this Court proceed immediately to deal with these patently illegal acts and practices of these parties will Negro chil-

*Motion to Add Additional Parties Defendant and
For Further Relief*

dren, Negro teachers and Negro parents in the community be able to enjoy their rights as secured by the Constitution.

The parties involved in the latest proceeding filed in Superior Court of Mecklenburg County are as follows: Mrs. Robert Lee Moore, for herself and for her minor children, Oscar Moore, Lois Moore, Grace Moore and Jerry Moore; J. D. Little, Jr. and Bettie C. Little, for themselves and for their minor child, Alec Little; John T. Vernon and Nancy H. Vernon, for themselves and for their minor children, David Vernon and Patty Vernon; Floyd T. Boyce and Louise D. Boyce, for themselves and for their minor children, Lou Ann Boyce and Lisa C. Boyce; V. Don Perrin and Nancy G. Perrin, for themselves and for their minor child, Vic Perrin; Jack V. Scott and Jane B. Scott, for themselves and for their minor children, Kenny Scott and Craig Scott; Mrs. Martha M. Glenn, for herself and for her minor child, Connie Glenn; William M. Hood, Jr. and Mary D. Hood, for themselves and for their minor children, Roby Hood, Wrenn Hood, William M. Hood, III and Mary Lib Hood; John D. Hasty, for himself and for his minor children, John D. Hasty, Jr. and Renee Hasty; Aubrey E. Easterlin, Jr., for himself and for his minor children, Billy Easterlin, Vickie Easterlin and Kim Easterlin; James E. King, for himself and for his minor children, Leigh King, Cynthia King, Susan King and Jan King; Melvin D. Childers, Jr., for himself and for his minor child, Cynthia Childers; Thomas S. Weaver and Margaret S. Weaver, for themselves and for their minor children, Libby Weaver and Terry Weaver; Ted E. Manning and Jackie Manning, for themselves and for their minor child, Steven Manning; Horace Davis, Jr. and Evelyn A. Davis, for themselves and for their minor children, Horace Davis, III,

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For Further Relief*

Evelyn Davis and Susan Davis; Orrie B. Oats, for herself and for her minor child, Leroy Oats, Jr.; Thomas B. Harris, for himself and for his minor children, Steve Harris and Kelly Harris; Lorene H. Dresser, for herself and for her minor child, Michell Dresser; John H. Horner, for himself and for his minor children, Laura Horner, John Horner and Brian Horner; Shirley C. Nail, for herself and for her minor children, Kim Nail and Deana Nail; G. Donald Roberson, for himself and for his minor child, Charles Roberson; Raymond Kenneth Young and Edna R. Young, for themselves and for their minor child, Kathy Young; William K. Summerville, for himself and for his minor children, Michael Summerville and Craig Summerville; James L. Kiser, for himself and for his minor child, Kimberly Kiser; Charles N. Briley, for himself and for his minor children, Allison Briley and Nathaniel Briley; William R. Dowtin and Marion W. Dowtin; J. Frank Newton and Frances M. Newton; W. Baine Martin and Elizabeth M. Martin; Edward S. Fisher and Emily S. Fisher; Thomas E. McCabe and Ann B. McCabe; Lloyd Ellis Zedaker, Jr. and Mary Frances Zedaker; Brenda A. Hill; Baxter L. Dixon; and Horace N. Williamson. Attorneys William H. Booe and Whiteford S. Blakeney brought suit on behalf of said parties. The Honorable Frank Snepp issued the restraining order on behalf of the parties. The temporary restraining order issued by Judge Snepp is returnable before him on the 3rd day of March, 1970 at 9:30 a.m.

Plaintiffs respectfully pray that the Court issue an order joining the following as additional parties defendants: Mrs. Robert Lee Moore, for herself and for her minor children, Oscar Moore, Lois Moore, Grace Moore and

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For Further Relief*

Jerry Moore; J. D. Little, Jr. and Bettie C. Little, for themselves and for the minor child, Alec Little; John T. Vernon and Nancy H. Vernon, for themselves and for their minor children, David Vernon and Patty Vernon; Floyd T. Boyce and Louise D. Boyce, for themselves and for their minor children, Lou Ann Boyce and Lisa C. Boyce; V. Don Perrin and Nancy G. Perrin, for themselves and for their minor child, Vic Perrin; Jack V. Scott and Jane B. Scott, for themselves and for their minor children, Kenny Scott and Craig Scott; Mrs. Martha M. Glenn, for herself and for her minor child, Connie Glenn; William M. Hood, Jr. and Mary D. Hood, for themselves and for their minor children, Roby Hood, Wrenn Hood, William M. Hood, III and Mary Lib Hood; John D. Hasty, for himself and for his minor children, John D. Hasty, Jr. and Renee Hasty; Aubrey E. Easterlin, Jr., for himself and for his minor children, Billy Easterlin, Vickie Easterlin and Kim Easterlin; James E. King, for himself and for his minor children, Leigh King, Cynthia King, Susan King and Jan King; Melvin D. Childers, Jr. for himself and for his minor child, Cynthia Childers; Thomas S. Weaver and Margaret S. Weaver, for themselves and for their minor children, Libby Weaver and Terry Weaver; Ted E. Manning and Jackie Manning, for themselves and for their minor child, Steven Manning; Horace Davis, Jr. and Evelyn A. Davis, for themselves and for their minor children, Horace Davis, III, Evelyn Davis and Susan Davis; Orrie B. Oats, for herself and for her minor child, Leroy Oats, Jr.; Thomas B. Harris, for himself and for his minor children, Steve Harris and Kelly Harris; Lorene H. Dresser, for herself and for her minor child, Michell

*Motion to Add Additional Parties Defendant and
For Further Relief*

Dresser; John H. Horner, for himself and for his minor children, Laura Horner, John Horner and Brian Horner; Shirley C. Nail, for herself and for her minor children, Kim Nail and Deana Nail; G. Donald Roberson, for himself and for his minor child, Charles Roberson; Raymond Kenneth Young and Edna R. Young, for themselves and for their minor child, Kathy Young; William K. Summerville, for himself and for his minor children, Michael Summerville, and Craig Summerville; James L. Kiser, for himself and for his minor child, Kimberly Kiser; Charles N. Briley, for himself and for his minor children, Allison Briley and Nathaniel Briley; William R. Dowtin and Marion W. Dowtin; J. Frank Newton and Frances M. Newton; W. Baine Martin and Elizabeth B. Martin; Edward S. Fisher and Emily S. Fisher; Thomas E. McCabe and Ann R. McCabe; Lloyd Ellis Zedaker, Jr. and Mary Frances Zedaker; Brenda A. Hill; Baxter L. Dixon; Horace N. Williamson; William H. Booc; Whiteford S. Blackeney; and the Honorable Frank Snapp.

Plaintiffs further pray that the Court issue a temporary restraining order dissolving the injunctive order entered in the proceeding by the Honorable Frank Snapp entitled: *Mrs. Robert Lee Moore, et al. v. Charlotte-Mecklenburg Board of Education, et al.*, 70 CVS 2045, and temporarily and permanently restraining any further proceedings in the action.

Plaintiffs further pray that the Court specifically enjoin Honorable Frank Snapp and all other State Court judges from issuing temporary injunctive orders or entering further proceedings designed to or which have the effect of restraining, preventing, prohibiting or in any way inhibiting the order of this Court.

*Motion to Add Additional Parties Defendant and
For Further Relief*

Plaintiffs further pray the Court for a temporary and permanent injunction against all defendants, including the additional parties defendant added and requested herein to be added and all parties having notice of the orders of this Court from initiating or proceeding with any action in any state court which has the purpose or effect of interfering with outstanding order in this cause.

Plaintiffs further pray the Court for a temporary and permanent injunction restraining all parties defendant from in any way intimidating the plaintiffs, students and teachers who seek in this proceeding to enjoy their constitutionally protected rights.

Plaintiffs further pray that the Court temporarily and permanently enjoin all defendants from in any way taking steps to inhibit or frustrate the orders of this Court.

Plaintiffs further pray the Court that they be allowed their costs in this proceeding and reasonable counsel fees.

Plaintiffs further pray that the Court direct the United States Marshal to personally serve a copy of the Complaint, the Amended Complaint, the Motion for Further

Relief and all orders, including the injunctive order prayed for herein upon all defendants named herein.

Respectfully submitted,

CONRAD O. PEARSON
203½ East Chapel Hill Street
Durham, North Carolina

CHAMBERS, STEIN, FERGUSON &
LANNING
216 West Tenth Street
Charlotte, North Carolina

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN CHACHKIN
10 Columbus Circle
New York, New York
Attorneys for Plaintiffs

**Motion for Temporary Restraining
Order and for Contempt**

(Filed February 27, 1970)

Plaintiffs, by their undersigned counsel, respectfully move the Court for a temporary restraining order and an order finding all members of the Charlotte-Mecklenburg Board of Education and the Superintendent of the Charlotte-Mecklenburg Public Schools in contempt and exacting a fine of each of the said defendants in the amount of \$10,000.00 per day or imprisonment pending compliance by said defendants with the orders of this Court. As grounds for said motion, plaintiffs respectfully show the following:

1. On Sunday night, February 22, 1970, the Honorable Frank Snapp of the Mecklenburg Superior Court entered an *ex parte* temporary restraining order purporting to enjoin the School Board from complying with the orders of this Court. The *ex parte* order of the Mecklenburg Superior Court was patently in violation of the supremacy clause of the Constitution of the United States.

2. On February 26, 1970, the defendants, Charlotte-Mecklenburg Board of Education and Superintendent of the Charlotte-Mecklenburg Public Schools removed the State proceeding to this Court.

3. Knowing the patent invalidity of the State Court order, the Charlotte-Mecklenburg Board of Education and the Superintendent of Charlotte-Mecklenburg Public Schools have now decided to ignore the orders of this Court and to follow the unconstitutional order of the State Superior Court. Said defendants have never intended and do not intend now to implement the orders of this Court

*Motion for Temporary Restraining
Order and for Contempt*

and, in the absence of some immediate steps by this Court, will continue to frustrate and deny the constitutional rights of plaintiffs herein.

4. On four different occasions, plaintiffs have alleged the contemptuous practices of these defendants of ignoring the clear directives of the Court and the rights of the plaintiffs. On each occasion, the Court has reserved decision. The patience of the Court now places the plaintiffs in the position of having declared constitutional rights which are being and will continue to be illegally frustrated and denied by the lawless actions of these public officials who have refused to obey every substantive directive of this Court.

5. In order to insure implementation of the Court's orders and the enjoyment by plaintiffs of their constitutional rights immediate and effective steps need be taken now by the Court. In the order entered by this Court on February 26, 1970, adding additional parties the Court directed the added parties-defendant to show cause on March 10, 1970, why the relief requested by plaintiffs should not be granted. Plaintiffs requested, on February 27, 1970, that other additional parties be added, parties who initiated and obtained the temporary restraining order issued by the Mecklenburg Superior Court. To wait now for the March 10, 1970 hearing would clearly frustrate and prevent implementation of the February 5, 1970 order of this Court.

WHEREFORE, plaintiffs respectfully pray that the Court issue immediately a temporary restraining order enjoining the enforcement of the State Court orders which infringe

*Motion for Temporary Restraining
Order and for Contempt*

upon outstanding orders of this Court; enjoining any further efforts by all defendants from taking steps which would prevent and inhibit the implementation of the orders of this Court and finding all members of the Charlotte-Mecklenburg Board of Education and the Superintendent of the Charlotte-Mecklenburg Public Schools in contempt of the orders of this Court and imposing a fine of not less than \$10,000.00 or imprisonment for each day that said defendants fail to implement the orders of this Court.

Respectfully submitted,

CONRAD O. PEARSON

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Durham, North Carolina

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JACK GREENBERG

JAMES M. NABBIT, III

NORMAN CHACHKIN

10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

Affidavit of J. LeVonne Chambers in Support of Order

J. LeVonne Chambers, being first duly sworn, deposes and says:

That he is one of counsel for plaintiffs in the above-styled case.

That since the filing of the most recent motion by plaintiffs for the addition of parties defendant and for further relief, it has been brought to his attention that the School Board, on advice of their counsel, has now decided to do nothing else to comply with this Court's order on the basis of the most recent restraining order entered by the Superior Court of Mecklenburg County on Sunday night, February 22, 1970 in the case entitled *Moore, et al. v. Charlotte-Mecklenburg Board of Education*, 70 CVS 2045.

That plaintiffs have taken further discovery with respect to steps previously taken by the School Board following this Court's order of February 5, 1970.

That the evidence now of record will establish that the Board has not complied and does not intend to comply with the mandate of the Court to desegregate.

That in order to insure the full implementation of the directives of this Court, it is imperative that the Court take action to insure compliance with its orders by immediately enjoining all proceedings in the State Court, temporarily and permanently enjoining the additional parties and the original parties defendants from in any way attempting to prevent or obstruct the carrying out of this Court's orders.

This 27 day of February, 1970.

J. LeVonne Chambers

(Sworn to February 27, 1970)

Request for Admission

(Filed February 27, 1970)

To: William J. Waggoner, Esq.
Weinstein, Waggoner, Sturges & Odom
1100 Barringer Office Tower
Charlotte, North Carolina

Benjamin S. Horack, Esq.
806 East Trade Street
Charlotte, North Carolina

Plaintiffs request that the defendants admit the following facts pursuant to Rule 36 of the Federal Rules of Civil Procedure:

1. That at least since 1930 until 1961 Mecklenburg County Board of Education, which has merged with the former Charlotte City Board of Education, operated public school buses to transport students to and from school.
2. That said Board operated and routed these buses on a racially segregated basis, transporting Negro students to Negro schools and white students to white schools.
3. That because of the segregated schools, bus routes overlapped and Negro students who may have resided near white schools were transported by such schools to all-Negro schools and white students who may have lived near Negro schools were transported by such schools to all-white schools.
4. That at least since 1930 until 1961 the Charlotte City Board of Education which has now merged with the former Mecklenburg County Board of Education, operated public school buses to transport students to and from school.

Request for Admission

5. That said Board operated and routed these buses on a racially segregated basis, transporting Negro students to Negro schools and white students to white schools.

6. That because of the segregated schools, bus routes overlapped and Negro students who may have resided near white schools were transported by such schools to all-Negro schools and white students who may have lived near Negro schools were transported by such schools to all-white schools.

7. Since 1961, following the merger of the County and City Boards, the school board continued to provide transportation for students in the sytem who resided in the county or within the areas of the city annexed subsequent to 1957 who resided more than 1½ miles from the schools to which they were assigned.

8. That since 1961 until the closing of the ten all-Negro schools in the county in 1966, the merged board continued to provide separate bus service for Negro and white students.

9. That pursuant to the plan approved by the Court in August, 1969, the school board has provided transportation for approximately 767 inner-city black students to be transported to white residential areas of the city and county.

10. That the inner-city black students above referred to in many instances passed other schools serving their grade level on the way to the schools to which they had been assigned.

Request for Admission

PLEASE TAKE NOTICE that answers to the foregoing Request for Admission must be served upon the undersigned within ten (10) days.

Respectfully submitted,

CONRAD O. PEARSON

203½ East Chapel Hill Street
Durham, North Carolina

CHAMBERS, STEIN, FERGUSON AND LANNING

216 West Tenth Street
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JACK GREENBERG

JAMES M. NABRIT, III

10 Columbus Circle
New York, New York 10019

Attorneys for Plaintiffs

**Amendment, Correction or Clarification of Order of
February 5, 1970 dated March 3, 1970**

Paragraph 7 of the February 5, 1970, order read in part as follows:

"7. That transportation be offered on a uniform non-racial basis to all children whose attendance in any school is necessary to bring about the reduction of segregation, and who live farther from the school to which they are assigned than the Board determines to be walking distance. Estimates of the number of children who may have to be transported have run as high as 10,000 or more."

Since February 5, estimates have been made by defendants that paragraph 7 would require transporting more than 23,000 pupils rather than 10,000 to 14,000, as estimated at the hearing. Upon reviewing the evidence introduced since that hearing, it appears that these higher estimates may be based on construing the above language of paragraph 7 so as to require an offer of transportation to all children who live more than 1½ miles from their school, including city children who are not now entitled to transportation. These, according to the testimony, may number as many as 13,000.

The court regrets any lack of clarity in the order which may have given rise to this interpretation. Paragraph 7 was never intended to require transportation beyond that now provided by law for city children who are not re-assigned, nor for those whose reassignments are not required by the desegregation program.

Accordingly, paragraph 7 of the February 5, 1970 order is amended by deleting the words "attendance in any school" and inserting the words "reassignment to any school," in the first sentence.

This the 3rd day of March, 1970.

/s/ JAMES B. McMILLAN

James B. McMillan

United States District Judge

**Court of Appeals Order Granting Stay Order of
March 5, 1970**

ORDER

An application for a stay pending appeal of the order of the District Court dated February 5, 1970 made to Judge Craven was by him referred to the entire Court pursuant to Rule 8 of the Federal Rules of Appellate Procedure.

Upon consideration by the full Court, it appears that disposition of this appeal will depend in part upon a resolution of factual questions as yet undetermined in the District Court. Specifically, the parties are in wide disagreement as to the impact of the order upon the School Board's transportation system, the number of pupils for whom transportation will be required under the order, the number of school buses needed to provide such transportation, their availability, and the cost of their acquisition and operation. The resolution of such factual issues is necessary to an orderly consideration of the issues on appeal insofar as they are directed to the order's requirement that transportation be provided for pupils reassigned under the order.

To facilitate the hearing and the disposition of this appeal, the District Court is requested, after such evidentiary hearings as may be necessary, to make supplemental findings of fact respecting the general issue of busing and the effect of its order with respect to the number of pupils transported, the number of buses required, their availability, and the additional capital and operating costs of transportation.

The District Court is requested, if possible, to file a supplemental order or memorandum, including such findings of fact, by March 20, 1970.

*Court of Appeals Order Granting Stay Order of
March 5, 1970*

This appeal is accelerated. The hearing of the appeal will be scheduled in the Court of Appeals in Richmond, Virginia, on April 9, 1970 and the attorneys for all parties are directed to file their briefs in the office of the Clerk of the Court of Appeals for the Fourth Circuit not later than Tuesday, April 7, 1970.

Since it appears that the appeal cannot be heard and determined prior to April 1, 1970, the date for implementation of the first phase of the order of the District Court, and since the Court of Appeals is presently unable to appraise, in the absence of the requested additional findings of fact, the impact of the busing requirements,

IT IS NOW ORDERED that the order of the District Court dated February 5, 1970 be, and it hereby is, stayed insofar as it requires the reassignment of pupils for whom transportation would be required under the order but who are now not transported or who are now being transported at substantially less distance and at substantially less expense, such reassignments being those arising out of the pairing and clustering of schools with resulting cross-busing.

To the extent that the stay granted by this order requires other modifications in the District Court's order, such modifications as may appear appropriate to the District Court to achieve a cohesive and efficient system of public education are authorized.

Except with respect to the busing requirements of the order which are hereby stayed and the resulting necessary modifications hereby authorized, the application for a stay is denied, and implementation of the order of the District Court is directed at the times and in the manner specified

*Court of Appeals Order Granting Stay Order of
March 5, 1970*

therein, subject to the further orders of this Court and the ultimate disposition of the appeal. This is in conformity with the general direction of the Supreme Court that orders of the District Court shall be implemented pending the hearing and determination of appeals from such orders. *Alexander v. Holmes County Board of Education*, 396 U.S. 19; *Carter v. West Feliciana Parish School Board*, — U.S. — — (January 14, 1970).

By direction of the Court.

/s/ CLEMENT L. HAYNSWORTH, JR.
Chief Judge, Fourth Circuit

Order Suspending Superior Court Order
(Filed March 6, 1970)

IN THE DISTRICT COURT OF THE UNITED STATES
 FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

CIVIL ACTION No. 2631

JAMES E. SWANN, *et al.*,

Plaintiffs,

—v.—

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION,
 a public body corporate, *et al.*,

Defendants.

and

CIVIL ACTION No. 1974

MRS. ROBERT LEE MOORE, *et al.*,

Plaintiffs,

—v.—

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, *et al.*,

Defendants.

On Sunday, February 22, 1970, Judge Frank W. Snapp, in *Moore, et al. v. Charlotte-Mecklenburg Board of Education, et al.*, a suit filed in the Superior Court of Mecklenburg County, North Carolina, signed a restraining order against the defendants. The order is of record. It appears

Order Suspending Superior Court Order

to have been filed at 10:16 P.M. on Sunday night, February 22, 1970.

On Friday, February 27, 1970, the defendant Board of Education had a meeting. Without any inquiry of this court, the Board staff were instructed to comply with the state court order and to stop work on compliance with the order previously entered by this court.

On February 28, 1970, counsel for all interested parties were notified that a hearing would be conducted on March 2, 1970, on motions to set aside or to restrain the effect of the Snapp order. Counsel for plaintiffs in the Moore case did not appear, but sent word through secretaries by telephone that they were occupied elsewhere.

The School Board attorneys have also filed on March 2, 1970, in the Swann case, Civil Action No. 1974, a motion which, although it does not clearly say so, amounts to a request by the Board to this court to relieve the Board of the burden of Judge Snapp's order so that it will not interfere with the preparation and implementation of a desegregation plan.

The Fourth Circuit Court of Appeals has now, on March 5, 1970, issued an order which postpones pending appeal the implementation of the clustering, pairing and cross-bussing provisions of the February 5, 1970 order, but which directs the implementation of the rest of the February 5 order according to its terms. It would appear that the Board should without question follow the order of the Court of Appeals, rather than consider itself hampered by the Snapp order. Nevertheless, in order that there may be no possible question about the effect of the Snapp order henceforward, it is now, in the discretion of the court and in the furtherance and protection of the jurisdiction and orderly processes of this court, and pursuant to ap-

Order Suspending Superior Court Order

plicable statutes, ORDERED, ADJUDGED AND DECREED, that the order heretofore signed by Judge Snapp in Civil Action No. 2631 in the Superior Court of Mecklenburgh County be, and it is hereby suspended and held in abeyance and of no force and effect pending the final determination by a three-judge court or by the Supreme Court of the issues which will be presented to the three-judge court on March 24, 1970.

IT IS FURTHER ORDERED, that the *Moore Case*, No. 2631, be referred to the three-judge court of March 24, 1970, for such hearing and determination as that court may find proper.

This the 6th day of March, 1970.

/s/ JAMES B. McMILLAN

James B. McMillan

United States District Judge

Order

(Filed March 6, 1970)

On March 5, 1970, the Fourth Circuit Court of Appeals entered an order which included the following:

"Upon consideration by the full court, it appears that disposition of this appeal will depend in part upon a resolution of factual questions, as yet undetermined in the District Court. Specifically, the parties are in wide disagreement as to the impact of the order upon the school board's transportation system, the number of pupils for whom transportation will be required under the order, the number of school buses needed to provide such transportation, their availability, and the cost of their acquisition and operation.

"The resolution of such factual issues is necessary to an orderly consideration of the issues on appeal insofar as they are directed to the order's requirement that transportation be provided for pupils reassigned under the order.

"To facilitate the hearing and disposition of this appeal, the District Court is requested, after such evidentiary hearings as may be necessary, to make supplemental findings of fact respecting the general issues of busing and the effect of its order with respect to the number of pupils transported, the number of buses required, their availability and the additional capital and operating costs of transportation.

"The District Court is requested, if possible, to file a supplemental order or memorandum, including such findings of fact, by March 20, 1970."

The court directs the parties to prepare and file with the Clerk of this court not later than Friday, March 13, 1970, all evidence (evidence should not be interpreted to include

Order

argument of counsel or others nor any extended opinions) which they would like for the court to consider bearing upon the factual questions referred to in the March 5, 1970 order of the Court of Appeals.

Counsel for all parties are directed to produce upon written request of opposing counsel all documents, records, exhibits, reports, evidence or data of any and every kind which may be requested by opposing counsel. If there are objections upon any basis the evidence shall nevertheless be produced and the court will pass upon the objections after examining the evidence and hearing from counsel.

Counsel are directed to appear before the court at 2:00 P.M. on Monday, March 16, 1970, for the purpose of examining such evidence as may then be available, and determining what matters can then be stipulated and whether any further testimony will then be necessary.

The objections filed by the defendants on March 6, 1970, to the plaintiffs' list of additional exhibits in evidence, and any other objections that any party makes to any demand for evidence or addressed to the production of evidence will be heard at the conference among court and counsel on March 16, 1970, and counsel will be given adequate opportunity to record their then objections and exceptions.

All counsel will provide opposing counsel with copies of all exhibits or other evidence sought to be introduced or which the court is requested to consider.

If a further hearing is necessary after the conference among court and counsel scheduled for March 16, 1970, it will be conducted on Tuesday, March 17, 1970, at 10:00 A.M.

This the 6th day of March, 1970.

JAMES B. McMILLAN
James B. McMillan
United States District Judge

Order

(Filed March 6, 1970)

Among other questions on which findings of fact for the court's report to the Court of Appeals may be necessary are the following:

1. Total numbers of children who live (1) in the pre-1957 city boundaries, (2) in the "perimeter" area, and (3) in the rural areas:

- (a) Elementary, black and white;
- (b) Junior High, black and white; and
- (c) Senior High, black and white.

2. Numbers of children in each school in the entire system who live in a different zone from that of the school they attended in January, 1970:

- (a) Those who are supplied transportation; and
- (b) Those who are not supplied transportation.

3. Average daily number of pupils riding school busses in each school for the months of October, November and December, 1969, and January and February, 1970.

4. With respect to the schools whose students are to be desegregated under the court ordered plan by rezoning:

- (a) How many pupils, school by school, live within a radius of one and one-half miles of each school?
- (b) How many pupils, school by school, live within a radius of two miles of each school?

Order

5. Statistics from the National Safety Council or any other responsible source showing the accident rate among school children and the relative safety of:

- (a) Walking;
- (b) Riding in private vehicles; and
- (c) Riding in school busses.

6. Three maps showing in clear coloring or markings with respect to elementary, junior high and senior high schools the following data:

(a) The school zone for all schools in which desegregation by zoning is to be accomplished under the court ordered plan; and

(b) Those schools in which desegregation is to be accomplished under the court ordered plan by pairing or grouping or clustering with other schools and providing transportation.

7. A map showing (1) the pre-1957 city limits, (2) the perimeter area, and (3) the rural area, with all elementary schools clearly located on it.

8. A map showing (1) the pre-1957 city limits, (2) the perimeter area, and (3) the rural area, with all junior high schools clearly located on it.

The parties are directed to procure and supply the court by March 13, 1970, with information as above described.

This the 6th day of March, 1970.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Deposition of John A. Finger
March 11, 1970**

[1] By consent this deposition was taken on March 11, 1970, at 12:15 P.M., in the offices of Chambers, Stein, Ferguson & Lanning, Attorneys at Law, 216 W. 10th Street, Charlotte, North Carolina.

By consent all objections except as to the form of the question are waived and objections will be made and ruled on at the time of trial. With the consent of all counsel, signature is waived.

APPEARANCES:

Plaintiffs—Julius L. Chambers, Esq.

Attorney at Law

Charlotte, North Carolina

Adam Stein, Esq.

Attorney at Law

Charlotte, North Carolina

Defendants—William J. Waggoner, Esq.

Attorney at Law

Charlotte, North Carolina

DR. JOHN A. FINGER, having first been duly sworn, was examined and testified as follows:

By Mr. Chambers:

Q. Your name is Dr. John A. Finger? **A.** Yes.

Q. What is your address? **A.** 35 Larch Street, Providence, Rhode Island.

Q. What is your occupation? **[2] A.** I am a college professor.

Deposition of John A. Finger March 11, 1970

Q. Were you requested by the Court to assist the Court in preparing a plan for desegregation of the Charlotte-Mecklenburg schools? A. Yes, I was.

Q. When were you so requested? A. On December 2, 1969.

Q. What instructions did you receive at that time, Dr. Finger? A. I was told to read the order of the Court and to prepare a desegregation plan for Charlotte-Mecklenburg that met the Court order.

Q. Would you state generally for the record what the objectives of the Court order were in terms of the kind of plan you were to prepare? A. As I understood it, I was to draw up a plan that resulted in the elimination of all of the all black schools.

Q. What kind of assistance were you to receive in the preparation of the plan? A. The Court ordered the School Department to provide me with whatever assistance was needed to draw up a desegregation plan.

Q. Were you given an office? A. Yes, I was given an office.

Q. Where was the office? A. In the School Department headquarters.

Q. Was the staff of the School Board directed to provide you with [3] all the information that you needed to prepare a plan for desegregation? A. Well, the Court order required the School Department to provide me with whatever information was needed and when I wanted information or when I wanted to meet with someone, I wrote to the School Superintendent and asked for the information or asked for a meeting with the school staff members.

Q. Did you receive information from the school staff?
A. I received everything I asked for.

Deposition of John A. Finger March 11, 1970

Q. Would you explain for the record some of the things that you did receive? A. I received the School Board minutes for the past year, I received demographic maps that showed the location of pupils by grade and race, I received enrollments in the various schools in Charlotte-Mecklenburg, I received school department maps showing the School Board desegregation plan.

Q. Did you get information relative to the teachers in the schools, the school capacities? A. Yes. I have information concerning the number of teachers in each school by race and I have met with the Superintendent, Asst. Superintendent Anderson, who is in charge of teacher assignments, to discuss the plans that he had for desegregating the faculties of the schools.

Q. Do you feel, Dr. Finger, that you received sufficient information in order to prepare a plan for desegregation of the [4] schools? A. Yes, I do.

Q. In the demographic map did that show the residences of the children, too? A. No. It simply showed the number of children residing in each half-mile grided area. The demographic maps are a grid that coincides with the larger school department maps and the number of children residing in each half-mile square block was shown.

Q. Did you receive information about the transportation presently provided by the school system for students? A. No, I did not. I didn't ask for it.

Q. Now, have you had occasion to study the transportation that is provided by the school system? A. I have not studied the present transportation system in detail.

Q. Would you tell us when you began work on the plan? A. That must have been about . . . it was a Thursday, must have been about December 5, I think it was, but it was a Thursday, whatever that date is.

Deposition of John A. Finger March 11, 1970

Q. And when did you submit your plan to the Court?

Mr. Waggoner: We will stipulate February 2. That's the date we had that first hearing.

A. February 2. I submitted a portion of the report the previous Thursday. The final portion of the report was submitted on [5] the day of the hearing.

Q. Would you tell us what you did in terms of a plan for the desegregation of this school system? How did you go about preparing the plan? A. When I accepted this appointment by Judge McMillan and he called a meeting on, I guess it was December 5, wasn't it, Mr. Waggoner?

Mr. Waggoner: Yes.

A. In his chambers where Mr. Waggoner and Supt. Self and I met, we agreed on the procedure that I would follow in working with members of the school department. It was agreed that whatever I wanted from Supt. Self would be requested in writing and I followed that procedure. I also stipulated that I did not feel that I should be a witness in this lawsuit after I accepted the position as consultant to the Court and I'd like to state for the record I am here under protest, that it was my understanding that I would be subpoenaed if I didn't appear. I do feel it is not appropriate to probe into the procedures that I followed in preparing the desegregation plan. I have reported the plan to the Court and that constitutes my official document.

Q. Would you tell us how you proceeded to desegregate the high schools in the system? A. The general procedure I followed in preparing the plan that I submitted to the Court was to meet with various members of [6] the school

Deposition of John A. Finger March 11, 1970

department staff to talk to them about how, to ask them about how, to ask them to react to various plans and procedures that I developed and to evaluate them in terms of their feasibility and in the process I obtained as many documents as were available to help me understand what would be the most effective way to proceed. The plan that I submitted to the Court for senior high schools is very similar to the plan that the school department prepared under the direction of the School Board and the only change that I made was to make it conform with the Court order that I was operating under so that it provided for desegregation of all the schools. I also made the plan so that it would provide very nearly equal ratios of black and white students in all the senior high schools.

Q. Now, how did your proposal differ from the proposal of the School Board with respect to the senior high schools? A. Both plans have been presented as evidence in the court. I would think that that question was answered by the documents that were submitted to the Court.

Q. Could you just explain for the record what you propose to desegregate the high schools that added to or modified what the Board proposed? A. Yes. I made the ratio of black and white students approximately equal to the ratio of all the students at that grade level.

Q. How did you accomplish that? A. By assigning grids to the various high schools. I used the [7] demographic map and just counted the number of students residing in each grid until I achieved a ratio that was approximately equal. In the plan that I submitted to the Court all of the schools have a ratio between 22% and 26 with the exception of Olympic, which was intentionally left low because of an anticipated housing development, and for North Mecklenburg which I felt ought not to be included in the desegregation plan.

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Q. Is North Mecklenburg the only senior high school that had no changes in terms of the boundaries? A. There might have been a slight change in North Mecklenburg, I'm not positive, but otherwise all the senior high schools had changes in the boundaries. I'd have to check the maps to make sure because occasionally boundaries were altered slightly.

Q. The plan designed by the Board made use of computer matching of grids from the map and enlarging or altering school boundaries, is that correct? A. Yes, that's correct.

Q. Does it also create a satellite district for one of the schools? A. Yes, it creates a satellite district for Independence High [8] School.

Q. Would you explain for the record what a satellite district is? A. Well, it's a district that is—in effect it's two districts that are not connected to each other. One district includes the geographic area in which the school is located and the other satellite district is a district not attached to the first one.

Q. Did your plan follow basically the plan submitted by the School Board with respect to the junior high schools? A. There is a good deal of similarity between the plan I submitted and the plan submitted by the School Board. The major difference is that their plan did not desegregate all of the junior high schools and it required that the attendance zones all be connected. I established some satellite attendance zones.

Q. Do you recall the satellite attendance zones you established for the junior high schools? A. They are shown on the map that I submitted to the Court. There is a satellite zone for Cochran, for Eastway, for Albermarle Road, for Alexander Graham, for McClintock, for Wilson, for

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Project 600 Carmel Road, for Smith, for Wilson and for Quail Hollow.

Q. Are these satellite zones that you have proposed for the junior high schools basically Negro residential areas? A. Yes, they are basically Negro residential areas.

【9】 Q. And these students are to be assigned to the outlying white junior high schools? A. Yes, they are to be assigned to the outlying white junior high schools.

Q. Now, did your plan follow basically the plan of the School Board with respect to the elementary schools? A. Well, yes, and then again, no. The School Board plan for elementary schools used grid assignments but it did not desegregate all of the elementary schools that my plan called for, pairing of schools in the center of the city with those in the outlying areas.

Q. Now, the pairing, are those schools shown on the last page of the exhibit you attached to your proposal? A. Yes, that's correct. I don't know that is a page but it's a document labeled Elementary Schools Paired. Is that the one you're referring to?

Q. That's the one. Did your consideration in desegregating the schools take account of the transportation of students? A. Well, I don't know just what you mean by take account of. I considered the problems of transportation in developing various desegregation plans and came to understand what kind of control one had over the amount of transportation involved.

Q. Now, do you know the number of students who would be involved in desegregation of the high schools as you have proposed? A. Repeat that question, please.

【10】 Q. Do you know the number of students who would be involved in the reassignment under the proposal you submitted to the Court for desegregation of the high schools?

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Mr. Waggoner: Would you read the question back, please?

(The Court Reporter reads the question on Line 1 above.)

A. Well, according to my count there are approximately 17,000 high school students. I guess they'd all be more or less involved.

Q. You indicated that the boundary for North Mecklenburg might have been altered some. Could you just estimate for us how many students would be reassigned under the high school provision of the plan? A. There have been some alterations in the students assigned to North Mecklenburg. Some students who were not assigned there last year will be going there and some students who were assigned there will not be. These are students who live close to the present city limits of Charlotte. My earlier statement should have simply noted that the children who live well north of the city limits were not included in the desegregation plan.

Q. Well, in your opinion would approximately 17,000 students be reassigned under the plan or less than 17,000 in the senior high schools. A. I never tried to estimate the number of children who would be [11] reassigned. It's a considerable number. It varies with the color of the student. There are more black students being reassigned proportionately than white students. Just a rough estimate I think there are probably 4000 students being reassigned.

Q. 4000? A. That would be a rough estimate. I need to sit down and do a more careful . . .

Mr. Waggoner: Move to strike the rest of it.

Q. Could you give us an estimate of the number that would be reassigned under your proposal of the junior high schools?

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Mr. Waggoner: Objection.

A. Well, Mr. Chambers, I could sit down with a map and make those estimates but I have not prepared those estimates and I really don't know the numbers that are involved. It's something that is easy enough to obtain. The school department could obtain that number if I were to ask for it. I didn't ask for it.

Q. Did you determine how many students would be provided transportation in the high schools? A. I asked the school department to prepare a report for me on the additional number of students that would be required to be transported under the State regulations and they have prepared such a report for me.

Q. How many senior high school students would be provided [12] transportation under the State regulations? A. Under the court consultant plan the additional number of students to be transported is 1,815.

Q. What about the junior high school students? A. I asked the school department to prepare an estimate of that and their estimate of the additional number of students to be transported according to State regulations is 2,286.

Q. What about the elementary schools? A. They prepared an estimate for me for the elementary schools and that estimate is 10,614.

Q. Dr. Finger, did you consider a different method for desegregating the elementary schools besides that you submitted to the Court?

Mr. Waggoner: Read that to me.

(The Court Reporter reads the question on Line 11 above.)

A. Yes, I did.

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Do you have a copy of the affidavit there, Bill?

Mr. Waggoner: No. I have a copy of your report to . . .

A. All right, I have that.

Mr. Chambers: You have a copy of the report to whom?

Mr. Waggoner: Whatever the one was that the Court received there. Have you not seen this?

Mr. Chambers: No.

[13] (Off the record at this point by consent.)

Q. The proposal you initially considered was altered in what respect from that finally submitted to the Court?

A. I believe I prepared some . . . I prepared three, four desegregation plans in considerable detail. I prepared more than that in partial detail. I have already stated that in an affidavit to the School Board attorney and I have already testified to the fact that I prepared several plans.

Q. Do you know why the plan that was finally submitted to the Court differed from the one that you had initially considered? A. I submitted to the Court the one that I thought was the best plan.

Q. Did you have any consultation with the staff to determine the one submitted was more feasible than the others you considered? A. I have always felt that the school department was the best judge of what would be the most effective plan.

Q. Did you have consultations with the staff as to the feasibility of the plan you submitted to the Court? A. You see, Mr. Chambers, I am not sure that I can answer

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your question because I have been in a unique position and the school department was ordered by the Court to cooperate with me and I think that all I can say is that they did cooperate with me. I consulted them extensively about the development of desegregation plans; they provided me with the information [14] I needed. I asked the Superintendent to provide me with staff members who would examine my plans and make judgments about them. I asked the Superintendent to make these judgments himself and when I finally submitted a plan it was the one I thought was the most feasible.

Q. Since the Court order have you had occasion to study approximately how many children would be provided transportation under your plan? A. Well, we read off the numbers that were prepared for me by the school department and these seem to me to be reasonable estimates of the amount of transportation that would be required. I have checked the transportation estimates for all of the elementary schools and I came up with approximately the same number as the original estimates made by the Board of Education . . . by the school department, excuse me. They show 10,614 and my estimates are approximately that same number, approximately 10,000.

(Off the record by consent at this time.)

Q. How many students did you estimate would be provided transportation for the junior high schools? A. Well, the School Board estimate was 2,286, but that estimate did not include any students to be transported to Alexander Graham Junior High School and the students who reside in the satellite district live approximately about four miles from the Alexander Graham Junior High School and it seems to me [15] to be unreasonable not to provide transportation for them. I would have increased my transporta-

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tion estimate for Alexander Graham by about 360 students.

Q. So your estimate would be approximately. . . ? A. I'm not finished yet. There is a satellite district for McClintock Junior High School and I estimate that there are approximately 325 students who would need transportation to McClintock. There are a small number of students, I estimate 100, who would need transportation to Sedgefield. And I estimate that there are about 500 students who would need transportation to Williams. According to my estimates, the school department report overestimated the number of children needing transportation in Smith Junior High School. They reported 432 and I think that 300 is a more accurate estimate. That would make 3,439 students.

Q. You estimate 3,439 for the junior high schools? A. Yes.

Q. What is your estimate for the senior high schools? A. I think the estimate that the school department prepared for me is essentially the same as my estimate.

Q. 1,815? A. That's correct.

Q. Did you consider the number of buses that might be necessary to provide transportation? A. Excuse me a minute. I need to have Mr. Morgan's affidavit.

[16] (Paper writing is handed to the witness.)

Q. Did you estimate the number of buses? A. Give me a few minutes to check my last statement.

RECESS FOR LUNCH

Q. Did you estimate the number of buses that would be required for implementation of the plan? A. I have made a number of estimates of the number of buses required. I based my estimates on 45-passenger buses. I also made estimates on 60-passenger buses. If there were no round

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trips at all, my estimates for busing are the elementary school level 217 45-passenger buses; 51 45-passenger buses at the junior high school; and 40 at the senior high school.

Q. Let me get those figures again. For the elementary? A. 45-passenger buses, 217.

Q. And for the junior high? A. 51, and for the senior high 40.

Q. And you say you also made an estimate with 60-passenger buses? A. Yes. That would take 163 buses at the elementary level; 38 at the junior high school level; and 30 at the senior high school.

Mr. Waggoner: What size bus is that?

A. 60.

Q. Your estimates are made on the basis of one trip? A. Yes, that's correct. It seems to me there are two ways that [17] one could utilize a bus for two trips. One way would be to have the elementary school buses used to transport the junior high and senior high school students. There are 217 elementary buses required. Half of these, approximately a hundred, would be coming into the city and a hundred would be going out from the city. Those hundred coming into the city could be utilized to provide the transportation for the junior high school students since most of those are bused out and also a large number of senior high school students are bused out and those buses could be used in that way. That would require staggering the starting hours of the elementary schools and junior and senior high schools. If one were to follow that pattern, it would require approximately the number of elementary school buses needed which would be 217. There is another alternate way of providing the transportation. One could

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provide staggered hours for the elementary schools. One could start a bus in the center of the city leaving for the, shall we call it the suburbs, and would be going against the traffic. Traffic would be coming into the city at that time of day, and it might leave at whatever time is desirable, let's say 8:00. It would arrive at its destination at approximately 8:30—take an average run time of half an hour. I haven't driven one of these routes and I don't know what the actual run time would be. Of course, the bus would be going non-stop, it would not be stopping to pick up any children, [18] it will not be stopping to leave off children. It will have a full bus that it's running on a straight run to its destination. In any event, when it arrives at that destination, it picks up children at the school. If it's a school in an area where children are transported in, those children have already been transported into the school under existing transportation and they are at that school. They board this bus which turns around and presumably not is behind the rush hour traffic and goes back into the center of the city. That bus, in following this plan, would then have to return to its starting point because the busing pattern would be the opposite way when school is closed. That is just one possible plan that one might use if the objective was to minimize the number of buses required. Under that plan instead of needing 217 45-passenger buses for elementary, I estimate one would need 109.

Q. Dr. Finger, let's look at the plan that the Court has directed itself and see how it operates. You have some maps here and these maps have been introduced as exhibits in court. The map for the senior high school has established boundaries. A. This is the Board plan map and that is the Finger plan map.

Q. I see. Now, on the Finger plan map, so-called, the one that has been directed by the Court, you have a satellite

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district in the midst of the city for Independence High School. [19] A. Yes, that's correct.

Q. You provide for approximately 300 high school students being assigned out of that satellite district? A. The School Board estimate of number of students to be transported to Independence was 300 and so I presume that that's the number of students residing in the Independence satellite zone. We could check that by getting the demographic map.

Q. Now, other than that satellite district, your plan is basically the same as that of the School Board? A. If one looks, for example, at the attendance zone for West Charlotte, one finds that the zones are almost identical. There is a difference way over here on the northeast section where the zone for the Board's plan follows this old attendance line here and on the Finger plan it goes just straight across, going across on the top of grids number 236, 237, 238, etc. Not very many children reside in that area and for practical purposes it's almost identical zones. You can see there is a little difference down in here where that zone is straight out.

Q. Now, the School Board proposed under its plan to provide transportation only for students who live outside the city limits or are assigned to schools outside the city limits as it existed in 1957. There is an affidavit by Mr. Morgan about the number of students who would be provided transportation under the Board plan for the senior high schools. [20] A. Yes, that's correct.

Q. How many students does the Board estimate it would be providing transportation for under its plan for the senior high schools? A. According to the Morgan affidavit, 53.

Q. 53 additional students? A. 53 additional students.

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Q. In looking at this map would there be several students living more than two miles from the school who would not be provided transportation under the Board plan? A. Well, I believe that all of these children who live out in the Hidden Valley area who would reside about four and a half, five miles from the school would not be provided transportation. That's pre-'57? I don't know how many children are going to be transported. The Board says under their plan that 53 students would be transported and then they say under the Finger plan 810 students would be transported.

Q. You're talking about for West Charlotte? A. For West Charlotte. Those essentially are the same attendance zones so that it's obvious that the number of students transported is not a function of the attendance zone nor a function of the size of the zone. If the same rules were to be followed under the Finger plan as followed under the Board plan, the Finger plan, I suppose, would require transporting about 53 students.

[21] Q. For West Charlotte High School? A. For West Charlotte High School.

Q. Looking at the junior high schools, what does the Finger plan propose? Students would be assigned there to junior high schools according to geographic zones? A. Students are assigned to junior high schools by geographic zones and there are satellite zones for ten of the junior high schools.

Mr. Waggoner: Could I interrupt? I have to make a phone call—I picked up the wrong file.

SHORT RECESS

Q. Going back to the senior high school, did you recompute the number of students who would be provided trans-

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portation? A. In the Morgan affidavit it shows that the number of students to be transported under the Board at the high school level would be 1,202. The major difference between the Board plan and the court consultant plan is in the satellite zone for Independence High School which has approximately 300 students in it. Thus one would expect the estimate of the number of students to be transported for senior high schools under the court consultant plan to be approximately 1,500, 1,200 plus 300. When the school department prepared their estimate they estimated 1,800 and I presume that the difference between those two figures has to do with the slight differences in racial balance in the attendance zones and that the minor [22] differences in these attendance zones result in 300 more pupils being transported under the court consultant plan than under the Board plan and I can't make any more accurate estimate than that 1500 to 1800 students would seem to me to be the appropriate estimate for senior high school students to be transported if one were to follow the Board rules for transporting students. The Morgan affidavit shows the court consultant plan to be transporting 4,106 senior high school students and that's at least 2300 more than my estimate. They are counting students in different ways in the Morgan affidavit.

Q. Now, for the junior high schools did you compute the approximate numbers of students that would be transported under the Court ordered plan? A. Well, the school department prepared estimates for me and they estimated 2,286. That's the estimate that I would make if I were counting students in the same way that the students are counted under the Board plan in the Morgan affidavit.

Q. How many does Mr. Morgan indicate would be transported in his affidavit? A. He shows that under the Board

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plan a total of 1388 students would be transported. My estimates of the number transported under the court consultant plan would be somewhat more than that. I already gave you the estimate that the school department prepared for me. In the Morgan affidavit he reports that [23] the court consultant plan would require 6,129 junior high school students to be transported. That is nearly 4,000 more than my estimate.

Q. Would you state the criteria that you're using for your estimates? A. Well, the criterion I am using for my estimates are the number of students to be transported according to State regulations. That's the rule that was followed when the school department prepared this transportation estimate for me. When one compares the attendance zones for the court consultant plan and the Board plan, one will find there are many instances where the attendance zones are identical or nearly identical. For example, we might look at the Williams Junior High School attendance zones and observe that those attendance zones are nearly identical and according to the Morgan estimate for transportation under the Finger plan there would be 630 students transported, but under the Board plan there would be no students transported. Now, obviously if one follows the same rules one transports the same number of students in the same attendance zone. We could go through many of these attendance zones and discover that the court consultant plan, in fact, requires less transportation.

Q. Than the proposal of the school . . . ? A. Than the proposal of the School Board, or it puts more students in close proximity of the school.

[24] Q. Looking at the Court ordered plan for elementary schools, would you explain basically what this plan does? A. What the Board plan does?

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Q. No, what the Court plan does. A. The Court plan has some schools that have redrawn attendance zones which are essentially walk-in schools. These schools with redrawn attendance zones are the schools that are largely on the perimeter of the center of the city or in the area where the Barringer and Marie Davis schools are. There are then some remaining schools that are all black in the center of the city and one all black school, the Marie Davis School near the center of the city, and a large number of white or predominantly white schools in the outlying area of the city. The attendance zones for the center city schools and for these outlying schools are essentially the same attendance zones as now exist and these schools are paired or grouped with schools in the center of the city so that black students from the center of the city at grades 1 through 4 leave their schools and are transported to a school that has been all white and the white students in turn in grades 5 and 6 go into the center of the city school.

Q. The number of paired schools is 34, 10 black and 24 white schools? A. It's a matter of record here. Is that the correct number? Yes.

[25] Q. The Court ordered plan differs in that respect from the plan submitted by the School Board? A. Yes, that's right.

Q. With respect to elementary schools? A. Yes, that's right.

Q. Have you made an estimate of the number of students who would be provided transportation under the Court ordered plan? A. Yes, I have. The court ordered plan requires transporting the students from the center of the city out to the white schools and the transporting of white students into the center of the city and there are approx-

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imately 10,000 students to be transported, 5,000 white students and 5,000 black students.

Q. Now, could you tell us whether the methods that are followed in desegregating the elementary schools are independent? You have some schools that have zones and some schools that are paired. Could the Board implement the plan for the paired schools immediately? A. Yes, they could.

Q. Could they implement the plan for the zoned schools immediately? A. Well, interestingly enough, it's harder to do that than it is the pairing because there is a lot more schools with change involved and they all have to change at the same time. But I believe the answer to that question is yes, they could.

Q. First of all, let's establish whether some schools in the [26] county have retained their previous geographic attendance zones. A. Yes, that's correct.

Q. The schools that are affected by the plan principally are those that are in the inner city and adjacent to the inner city, is that correct? A. The inner city schools have the same attendance zones under the court consultant plan as they had before. Those have not been changed.

Q. And is the same true of those schools that are paired with the inner city schools? A. Those schools that are paired with the inner city schools have, for the most part, not been changed. We could look at some specific illustrations if you wanted to.

Q. Would you do that? A. We could note the Bruns Avenue School that is located at grid 317B and it has, I believe, the same attendance zone under this plan that it has had previously and under the court consultant plan it is to be paired with Huntingtown Farms, which is lo-

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cated at grid 534B, and with Sharon at 570B, and with Starmount at 508C. All three of those schools have the same attendance zones under the court consultant plan that they have at the present time. Thus it would be possible to just carry out the pairing or clustering since there are four schools involved here for those four schools and it wouldn't [27] involve any other schools or any other dislocation of pupils at all.

Q. The pairing or clustering, then, could be done independently of each other, you could do one set of pairing without doing the others? A. Yes, you could. It was the major reason that this plan was proposed to the Court. It can be done step by step.

Q. Would you explain that? A. Well, if there are questions as to the exact amount of transportation required, one way to find out the exact amount of transportation required is to carry out or begin to carry out the desegregation plan and you could pair group by group as long as you've got school buses to do it with. When you run out of school buses, you may have to stop implementing the plan at that point.

Q. What makes it easier to carry out the clustering of schools than to make the assignments under the new attendance zones? A. Well, the attendance zones for the paired schools have not been changed and, therefore, the children already going to that school can get to the school using the present transportation routes that are already established. When they arrive at that school, there is a bus to take them to their new school assignment and so that the only change that takes place is the cross city bus run, a straight run.

Q. And with the rezoning, if it becomes necessary for the Board [28] to determine who the students are in the new

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zone? A. The school department can do that because they know the names of the students that live in each one of the grids but you have to do it all at the same time. Many of the children, a large proportion of the children will be going to the same school they were going to in the past. When you change one school, some children who have been in that school have to leave in order to make room for the new children coming in. So you have to schedule a day in which a large number of children change schools. Since most of these children are going to be able to walk in, it will be feasible to do this. I suppose the Superintendent can write a letter. The computer system has the names of all the children in those grids and it's a matter of preparing a letter and addressing it by computer advising the parents what school to go to.

Q. We talked earlier this morning about the other plans that you had considered. Would you tell us now the reason why the plan that was submitted to the Court was substituted in lieu of the plan that you had initially worked up?

A. I developed one plan that had some features that were improvements on the one that the Court has ordered. It used hand-drawn attendance zones, zones that followed natural boundaries for the schools that were contiguous to the center city. By doing it that way you can reduce the number of children to be transported, but not a great deal. It also changed a large [29] number of attendance zones and it was apparent when the plan was thoroughly studied by the school staff that it was extremely difficult to implement that plan and I became aware of the fact that while the plan had some features that were improvement, it was very hard to carry out.

Q. Was the difficulty of implementing the plan that you initially prepared a matter of time, that it would take more

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time to implement the one that you had than the one you submitted? A. Well, there were other features that were different and it seems obvious when one studies this plan that was submitted to the Court that one of its major features is that it's a feasible plan one can carry out and I think that it was in consultation with the school staff that I became aware of the fact that this was a plan that could be carried out.

Q. You have a statement in your report to the Court which reads as follows: . . . the last page of the report . . . "I have prepared several different desegregation plans. No matter which is pursued the end result is that approximately 5,000 children must be bused out from the center of the city and 5,000 bused in. The problem becomes one of deciding which children should be bused and how far. Should the distance traveled be given priority? Should a child residing five miles from a school be exempt but not a child who would be bused four miles?" And skipping the next two paragraphs, you then say: "It is my understanding that the School Board had considered and [30] rejected a plan that would bus children to provide for complete desegregation. That plan is attached to this report. You will find that there are various tables showing projected enrollment and a map detailing the schools to be paired." What plan was that that was rejected by the Board? A. The court consultant plan.

Q. The one that was submitted to the Court? A. That's my understanding, yes.

Q. Dr. Finger, had the staff considered the plan you have submitted to the Court and that has been directed to be implemented by the Court and found that plan to be feasible?

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Mr. Waggoner: Objection unless he knows.

A. I wouldn't have submitted the plan to the Court if I didn't think it was a feasible plan and if it was not my impression the school department felt it could be carried out.

Mr. Waggoner: Motion to strike his answer.

Q. Have you studied Mr. Morgan's affidavit? A. I only received it this morning but I have studied it and I have a page missing on the elementary schools. I read it through and, yes, I have studied it briefly.

Q. Mr. Morgan has stated in his affidavit that he estimates that he needs approximately 526 buses to implement the court ordered plan. Did you have a chance to consider that estimate? A. Yes, I did.

Q. Did you find that estimate to be accurate? [31] A. I found it to be utilizing different rules for counting students under the court consultant plan than under the Board plan and I don't know how Mr. Morgan arrived at these numbers that he lists under his transportation estimates for the court consultant plan. We've already testified to the effect that at the junior high school and high school levels he makes estimates that are grossly different from my estimates and it's quite clear that when he says that the Board plan is requiring one number of buses and the court consultant plan is requiring a different number of buses he is using different methods of estimating the number. As far as I can tell, the number of junior high school students and the number of high school students . . . strike that, please, I want to start over again. I've already testified to the number of high school and junior high school students that would be transported under the court consultant plan. Un-

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der the elementary school plan I estimate that the number of children to be bused would be approximately 10,000, the 5,000 children bused into the center of the city and the 5,000 bused out in addition to those already bused.

Q. Did you find any other discrepancies in the estimates of Mr. Morgan? A. Well, yes. We could detail all of the discrepancies at the junior high school level if you wanted to do that.

Q. Let's do that. [32] A. I can also note some discrepancies at the elementary school level but because I am missing a page of his affidavit, I can only note discrepancies in a few of the elementary schools.

Mr. Waggoner: What page is missing?

A. It's the first page that begins Albemarle School, and so on, for elementary schools. I note that he shows under the court consultant plan for elementary schools for Huntingtown Farms he shows 220 students; for Sharon he shows 230; for Starmount he shows 256. Those add up to 706 students. Those schools are all clustered with Bruns Avenue. But the number of white students to be transported are only 540. Therefore, there's a difference of 166 students. I don't know how he got those estimates. I would think that the number of additional students to be transported from those three schools, Huntingtown Farms, Sharon and Starmount, would be 540 since that is the number of 5th and 6th grade white students shown in Bruns Avenue.

Q. Would you give us some other examples of the elementary schools? A. Yes. His Park Road and Pinewood add to 691 but only 532 white students are to go to Marie Davis, the school paired with those two schools. He shows 342 from Hidden Valley. That school is paired with Druid

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Hills but 303 white students are assigned to Druid Hills. His estimates for Montclair, Rama Road are 529. Those schools are grouped with University Park [33] and the number of white students there is 461. For Selwyn, Windsor Park and Winterfield the total number of students is 1053 but their satellite school is Villa Heights which has 668 white students in it. I might add that all of those schools have the same attendance zones under the court ordered plan as they do now.

Q. No additional students would be involved? A. No additional students would be involved. The only addition would be the transportation for pairing or clustering.

Q. Would you look at the junior high school estimates and tell us whether you have noted any discrepancies there in Mr. Morgan's affidavit? A. I believe we have already mentioned the Williams discrepancy. Those attendance zones are essentially the same zones but under the court consultant plan there are 630 students to be transported and none under the Board plan. For Alexander Graham Bell there are 732 to be transported under the court consultant plan and none under the Board plan. If one compares those two districts one finds that the distances involved in getting to school are approximately the same even though the court consultant plan has a satellite zone. Those same children residing in that satellite zone are assigned to the Alexander Graham School under the Board plan so that the same students are involved. The difference is that a group of students in an interim area are assigned to a different [34] school. They are assigned to Piedmont under the court consultant plan and they are assigned to the Alexander Graham School under the Court ordered plan.

Q. Court ordered or Board plan? A. Under the Board plan, whichever it should be. I'm mixed up. Eastway shows

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603 students to be transported under the court consultant plan and none under the Board plan but again if one compares the attendance zones for Eastway, one finds that this grid #296A, C and D constitute the satellite zone for Eastway and under the Board plan two of those same grids, 296C and D are assigned to that school. The difference is that the Board plan has this long, strung-out attendance zone but the attendance zone for the court consultant plan is essentially a more compact one. Therefore, it ought not to require more transportation but less, if one were to count the transportation in the same way. The court consultant plan, according to the Morgan affidavit, York Road transports 365 students and the Board plan none; Hawthorne 468 under the court consultant plan and under the Board plan none; Spaugh under the court consultant plan 290 and under the Board plan none; Randolph under the court consultant plan 90 and under the Board plan 59; Piedmont under the court consultant plan 424 and under the Board plan none. If one examines those attendance zones one would find they are for the most part very similar in geographic area except for Piedmont. Piedmont has [35] a different configuration under the court consultant plan because it is a desegregated school and under the Board plan it was an all black school or predominantly black school. If one examines the compactness of the two districts under the two plans, one finds one is as compact as the other. The other two schools to be mentioned are Sedgefield, 252 under the court consultant plan and in the Morgan affidavit none; and Coulwood 126 and the Board plan has more, 220.

Q. Again, as I understood your testimony with respect to the number of buses, you estimate is that if the method of staggering school terms is used that the Court ordered

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plan could be implemented with 109 buses. A. At the elementary school level.

Q. Would additional buses be needed for the junior high and senior high schools? A. Yes. The 109 for elementary schools assumes staggered hours, with each bus making a run in and a run out, or a run out and a run in.

Q. One of the questions directed by the Court of Appeals was how many buses would be needed to implement the plan. Now, would you give us a figure of what you would consider the minimum number that would be needed to implement the plan as directed by the Court? A. If one were to start with, let's say the Marie Davis, Park Road, Pine-wood cluster, and use staggered hours, it would take [36] 11 buses to do that one clustering, 11 45-passenger buses. As I have already testified, one can begin to implement the plan because one can do it cluster by cluster. You asked me the total number of buses required to implement the plan and I'll try to make an estimate of that. I have already testified that one estimate would be the number of elementary school buses making a single run because these buses could be used for junior and senior high schools transportation. That estimate would result in 217 being required. Another procedure would be to use elementary buses on staggered hours and one way bus runs for junior and senior high school students. That would give me an estimate of 200 45-passenger buses.

Q. Would that 200 be for the elementary, junior and senior high schools? A. That would be for all levels, that's correct. I believe that it would be possible to use less transportation than this because I believe that it would be possible to utilize public transportation for some of these junior and senior high school students and that might be by far the more feasible procedure to follow. I am unable

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to work out the complete details or the details on what such a plan would be but I have made a rough estimate that the number of buses required might be under 150 if public transportation were used to supplement the senior and junior high school transportation. This would not [37] mean using their buses for just school purposes but providing funds for junior and senior high school students to ride on the buses on their existing routes.

Q. The estimates you have just given us were based on a 45-passenger bus? A. That's correct.

Q. Would the estimate be less if you were talking about a 60-passenger bus? A. Yes. If you're talking about a 60-passenger bus the elementary might require only 83 buses and the junior and senior high schools 20 buses. I want to make it clear that I have made these estimates without a very detailed analysis of exactly where these bus runs are but in contrast to the affidavit here that shows some 500-odd buses are required, I think that my estimates are far more accurate than those.

Q. There is an affidavit submitted by the Board to the effect that by adding buses on the streets that it would, Mr. Hoose says. . . .

Mr. Waggoner: You're starting to bedraggle this thing. Can you hit the nails and get going because I've got a lot of questions I have to ask and I'm going to stay here as long as I have to and I'm not going to burden Mrs. Berger with a deposition that she can't complete by Friday.

Mr. Chambers: The thing I want to do here is to [38] check. You filed some affidavits in here.

Mr. Waggoner: I have no objection, I'm just making a statement.

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Q. It's talking about stop and go traffic of the buses on the streets. Would you state the method that is proposed? Are these buses going to be stopping on the streets? A. Not to load and unload passengers. The pickups in the center of the city would be, I suppose, at the schools and I would suppose the pickup would be at the white schools that are paired because many of those children would be bused into their schools on existing bus routes and so there would be no pickups at all. The paired school transportation would be from school to school with no stops.

Q. In picking the pairs for the schools did you take into account the roads and streets over which the students would be transported? A. I believe that the staff that prepared those plans for me took two things into consideration. One was the capacity of the school and the other was the available transportation.

Q. Did you have some pairs that you considered that were eliminated because the ones that were finally adopted were more feasible? A. Well, by the time we came to the drawing up of this final plan, the staff and I had worked together on a great many different arrangements of clustering and pairing and we had [39] come to know what schools would pair with what and some of the earlier plans, we had corridor-like clustering, and some of the members of the school department staff were well familiar with where the clustering would effectively take place, given where the roads existed where clustering would be most effective.

Q. I might have asked you this but I'll ask you again. In your opinion can the plan as directed by the Court feasibly be implemented by the School Board within the time directed by the Court? A. I have already testified to the effect and I believe it is in the report that I submitted to the Court that it was possible to make a step by step im-

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plementation of this plan. I've said a number of times this afternoon that the plan for elementary schools could be started at once. When the School Board will find that it does not have sufficient school buses to continue implementing the plan, I'm not positive, I presume at that point . . . I presumed originally that at that point they would come to the Court and say we've carried out half of the clustering that you ordered and now we are out of buses. It's my understanding that there are enough buses available to begin the implementation of the plan. It's not my opinion they could do it all tomorrow.

Q. Is your answer to my question whether they could implement the plan within the time directed by the Court yes or not?

[40] Mr. Waggoner: I object. I don't think this witness could possibly know the answer.

A. It seems to me I already testified to that on several occasions. I have said the redrawn attendance zones in the area contiguous to the center of the city could be implemented, children could be reassigned in that area, and I have already testified to the effect that some of the pairings could be done at once. I'm not positive that the school department has sufficient buses to do all of it. However, they say that there are 75 buses available from the State. I don't know what availability those are. My estimates would indicate that would come close to fulfilling the requirements.

Mr. Chambers: I have nothing further.

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By Mr. Waggoner:

Q. Dr. Finger, your first participation in this case was as witness for the plaintiff, was it not? A. Yes, that's right.

Q. And you came in at that time with a plan for desegregation. A. Yes, that's right.

Q. And you had two of your colleagues from Rhode Island College who also testified on behalf of the plaintiffs. A. Yes, that's right.

Q. You later came back with a plan for desegregation which involved substantial pairing of schools, did it not? A. Yes.

[41] Q. This pairing arrangement left a large number of black and white schools, did it not? Do you recall that you left some all black and all white schools as a result of that pairing arrangement? A. I believe that's correct.

Q. And the only possibility you saw for breaking up the all black and all white schools was fairly long-distance busing, is this correct? A. I believe that's correct.

Q. You were appointed by the Court and first came to Charlotte around December 5, is this correct? A. Yes.

Q. How much time did you actually spend in Charlotte during the period that you actually worked on devising the court consultant plan? A. Didn't bring my vouchers with me but I would estimate that I was in Charlotte approximately fifteen to twenty days.

Q. And most of your time was in reviewing statistics and reviewing maps and records of the school system, is this correct? A. No, that is not correct. I spent a great deal of time meeting with the members of the school administrative staff, consulting with them as to what would be the best strategy to follow in developing a desegregation plan

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and in providing them with procedures to follow to draw up a desegregation plan. When I first arrived in the school department, the school department [42] was unable to work on a desegregation plan because they had no authorization from the Board of Education and so when I arrived they were under Court order at that point to work with me and so we began together to explore the various ways in which the Court order could be met.

Q. All right. Now, with reference to your understanding of what was required of you, what criteria did you impose in seeking to achieve a desegregated school system in Charlotte? A. I believe I have defined that in my report to the Court. I have given a definition and it's my understanding that that definition is more or less implied by the Court order.

Q. Would you state the definition, please, sir? A. A desegregated school will be defined herein as one whose minority group enrollment does not exceed by more than 5% the proportions in all of the schools at that school level.

Q. So what this would mean is that at the elementary level a school should not have more than 35% black. A. That's correct.

Q. And on the junior high approximately 33% black. A. That's correct.

Q. And 31% on the senior high. A. That's correct.

Q. It makes no difference to you if it's 1% or 2% as long as you do not exceed the 5% ratio, is this correct? A. I'm not quite sure what you mean by it makes no difference.

[43] Q. Would you regard a school as desegregated if it had 1% black provided no other elementary school had more than 35% black? A. As I understand the order of the Court, it did not require the elimination of all of the all white schools. It only required the elimination of the

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all black schools and this definition provided a working procedure to follow in arriving at a desegregation plan. It was a working procedure that I felt would prevent resegregation from taking place and I assume that that's what the Court had ordered me to do.

Q. And this is what your statistics show, is this correct?

A. There are one or two schools that are slightly off.

Q. I mean generally. A. Yes.

Q. I believe you also assume that the neighborhood school was no longer a predominant pattern that would be followed in the desegregated system, is this correct? A. Yes. I believe the Court had something to say about that in their original Court order. It might be appropriate to quote from it.

Mr. Chambers: Is that the April 23 order you're referring to?

Mr. Waggoner: I have a package you sent me in the mail, let me get it. Which order are you reading from?

Mr. Chambers: April 23.

[44] A. The Court said in its April 23 order: "If this court were writing the philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships. The neighborhood school concept may well be invalid for school administrative purposes even without regard for racial problems." He had many other things to say on the neighborhood school but I was following the Court order and so I assumed I was not required to follow the neighborhood school concept.

Q. All right. So you have abandoned this concept to the extent that it doesn't produce desegregation, is that basi-

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cally what you have done? A. I have carried out the Court order.

Q. You also make a recommendation that the school authorities stay on top of this and revise and constantly look over the boundaries and ratios of students in schools so as to, in effect, police it, is this correct? A. So as to maintain desegregated schools, yes, sir. I suppose that if an all black school is unconstitutional, it is required that the school board take corrective action and I so recommend to the Court.

Q. This is a question that hasn't been fully answered by the courts yet, has it, to your knowledge? A. I'm an educator, not a lawyer.

[45] Q. Now, with reference to transportation you made certain recommendations, one of which was staggering the opening and closing of schools. Are you familiar with the method of employment of the drivers of the school buses? A. Yes, I am.

Q. Would you describe it for me? A. Well, it's put out in one of these affidavits here. It's not my intent to have recommended that student drivers be assigned to this transportation for cross busing. I would use adult drivers.

Q. You would use adult drivers. A. As I testified earlier, those buses will have to return to their starting point for their return trip.

Q. What utilization would you make of these employees as an educator while they are not driving the buses?

Mr. Chambers: Well . . .

Mr. Waggoner: I'm asking. This is part of the overall expense.

Mr. Chambers: What use do you make of the adult bus drivers now?

Mr. Waggoner: I'm asking him.

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A. You ask me as an educator and I don't see why that's relevant to an educational problem. I didn't intend to make any use but there might be some use for them in the schools where they. . . .

[46] Q. Would it be fair to say that you haven't considered that? A. Yes, indeed, it would be fair.

Q. I believe you also recommended that students residing more than one and one-half miles from their school should not be penalized by having to walk, nor be penalized by having to pay for public transportation. A. I so recommended that to the Court. It's a matter of record.

Q. Do you still adhere to this recommendation? A. Well, I think it's important that we differentiate between that transportation that makes the walking distance one and a half miles and that transportation that is involved in simply carrying out the desegregation plan. Those are two separate and distinct problems. If the School Board proposes to have these children in grid #296C walk over to Eastway, a distance of four miles, they'd go that distance under either plan. It would seem to me that since the children who are doing most of the walking would be black children that it wasn't fair to them.

Q. I ask you to address yourself to Northwest Junior High. A. Yes, sir.

Q. What students would be walking to that school? A. Well, it would be a lot of black children walking to that school. Some children live outside the district line that I assume will be riding to the school.

Q. There are many of those students who are white who will be [47] walking, are there not? A. There will be some students—and I don't know just where this line is—that will be walking in because the earliest city district line is not shown on these maps. One can't look at this map and

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see. I understand the Court has asked for the documentation so that one can determine the numbers of students. I couldn't answer that question.

Q. I ask you to address yourself to the J. T. Williams line and ask you what race of students will be walking there. A. I said that I thought the Hidden Valley students would be walking into the Williams School and I said that I thought that was too far for them to walk. Someone corrected me and said that they lived outside the old city limit and so they would be entitled to transportation. The only thing that it seems clear to me is that the students who will be attending the Williams Junior High School are the same students under either plan, or essentially the same students, so that the question is whether or not students are to be required to walk long distances or not.

Q. The walking will involve both black and white, will it not? A. I believe I testified earlier that it looked to me as if there would be far more black students who would be doing the walking but I haven't actually made a count of the number of black and white students.

Q. This is at best a guess on your part? [48] A. I wouldn't exactly call it a guess. I have studied these maps carefully over a long period of time.

(At this point in the proceedings Mr. Horack and Mr. Morgan arrived in the hearing room.)

Q. Dr. Finger, with reference to your recommendations on implementation of a desegregation plan, you recommended to the Court as an educator that the assignment of high school students be made as soon as possible and also junior high, but by reason of curriculum and faculty changes and things of this nature it would be unwise to do it prior to the end of the year, is this correct, from an educational

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standpoint? A. I believe I differentiated between the senior high schools and junior high schools in that the requirements at the senior high school level, the programs were much more tailored to individual students. Therefore, in my opinion these students should be allowed to continue their education in their present schools and I suggested to the Court that if the schools were planning the programs and were assigning the courses to the students during this spring semester that might constitute a phasing in of the desegregation plan.

Q. But the actual attendance of the students at the schools would be deferred until next year according to your recommendation. A. Do you have the page?

Q. Not numbered. [49] A. I numbered mine.

Q. It looks like about page 10 or 11. A. My recommendation was that the assignment of high school students be made as soon as possible so that detailed plans for curriculum and faculty changes can be completed. The students in the present 10th and 11th grades should be required to report to their new school assignments during the spring semester. And I left that intentionally vague.

Q. Was there any reason why you were more specific with reference to junior high schools wherein you stated: "The school department should be required at least to have the junior high school students report to their new school assignments during the last week of school."? Is there any reason for differentiating between junior and senior highs? A. It was my understanding that the Court was uncertain as to what the law required it to do.

Q. I'm asking you as an educator. A. Repeat the question.

Q. As an educator do you feel it desirable to uproot junior and senior high school students on May 4 and physically put them in another school?

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Mr. Chambers: We object to the question.

A. I would say that the question was . . . strike that, that was off the record.

Q. We don't have off the record. You can't answer the question? [50] A. Of course, I can answer the question. My recommendations are stated in the document and as an educator I would feel that the junior and senior high school students should be allowed to stay in their present school assignments during the current year but that they should report to their new school assignments during the last few weeks of school so that the school programs can be adequately planned for the fall semester.

Q. And this is primarily by reason of curriculum and faculty and things of this nature, is that correct? A. And it's also so that the whole implementation of the plan can be restructured during the summer, the transportation reexamined and approved, and so on.

Q. You're firmly satisfied that there is no way to desegregate the inner city schools other than the long-distance busing of the nature that has been employed in your plan, is this correct? A. Long-distance is a relative term.

Mr. Chambers: I object to the form of the question, too. Mr. Waggoner is inserting a lot of adjectives that are opinionated by Mr. Waggoner and not justified by the facts in the case.

Q. Would you read the question back, please?

(The Court Reporter reads the question on Line 14 above.)

[51] A. I prepared some plans that had shorter distances in them and I believe I say in my report that one can con-

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trol the distance that a child is to be bused and which children are to be bused when there is little control over the number to be bused.

Q. All right. You have a statement in your recommendation: Should a child residing five miles from a school be exempt but not a child who would be bused four miles. Is this in the area that you think is a reasonable distance to be bused for desegregation, between four and five miles?

A. Most of the transportation in the proposed plan, the court consultant plan, exceeds that distance. It was simply a manner of speaking.

Q. Then there is no significance you would attach to the use of four miles or five miles in your report to the Court?

A. The importance of distance depends upon the roads and the traffic conditions. Five miles isn't long on an expressway, ten miles isn't long on an expressway; ten miles isn't long on a main highway where the bus can move.

Q. Do you know the maximum speed a school bus can travel in the State? A. I believe it's in one of the affidavits. Is it 35 miles an hour?

Q. That's correct. Do you know the minimum speed limits on the interstate highways? Is it 45 miles? [52] A. I just mentioned interstate highways. I don't think anyone was proposing transporting these children on interstate highways.

Q. You would object to it yourself, wouldn't you? A. I think it might be done but it was my understanding that the school department felt it was unwise to do that.

Q. Is there a great difference of opinion among educators as to whether or not an elementary child should be bused to achieve desegregation? A. There's an awful lot of difference of opinion these days on busing. It seems to be a major issue, doesn't it? Professor Coleman who

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wrote the Coleman Report spoke to that matter recently. There was a story in the New York Times about it. He was the one that wrote the Coleman Report that produced a lot of evidence as to the desirability of desegregating schools. He certainly felt busing was worth it.

Q. As far as elementary children were concerned? A. Yes, sir.

Q. Are there any educators who feel busing of elementary children is unwise? A. I suppose there are some. One can find people on most sides of most things.

Q. You conducted a major survey of this system with Dr. Passey, did you not? A. That isn't the language I'd use to describe my work with [53] Professor Passey. He was involved originally in the Charlotte case and he drew up a desegregation plan and he testified to the Court. I really wasn't very much involved with Professor Passey.

Q. He is a colleague at Rhode Island College, is he not? A. Yes, he is on the faculty of Rhode Island College.

Q. You were present in the courtroom when he testified he did not favor busing elementary children, particularly grades 1 through 4, out of their neighborhoods for safety and other reasons that are attributed to the neighborhood benefits. Were you present then? A. I don't think I was.

Q. Is this an unsound educational position? A. I believe that some 18 to 23,000 children in the Charlotte-Mecklenburg County get transported now and a large portion of those are elementary school children.

Q. Would you answer the question? A. What's your question, which way did you put it? Is it unsound to bus children? No, it's not unsound to bus them.

Q. Is it unsound to unnecessarily bus them?

Mr. Chambers: Objection to the form of the ques-

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tion. Will you define what you mean by unnecessarily?

Mr. Waggoner: I'll let the question stand.

A. I don't know what you mean by unnecessarily. If the only way [54] to desegregate schools is to bus elementary school children, I don't think that's unnecessary, for educational reasons.

Q. Let me ask you this question. I asked you this earlier and haven't had an answer yet. Is there wide dispute among educators as to the relative benefits of busing elementary children to achieve desegregation substantial distances from their homes? A. I don't know what you mean by substantial distances.

Q. All right, ten miles. A. I don't believe all educators feel that one ought to bus children. Apparently a great many educators do because they have abandoned the one-room school house in favor of central consolidated schools. So I guess they think there are educational advantages to busing children.

Q. Are there a substantial number of educators who feel there are disadvantages to the type busing we are discussing of elementary children? A. I don't think this type of busing is any different from any other type of busing. The question is whether the child will benefit educationally.

Q. Would you answer the question, please, Dr. Finger? A. Give me the question.

Q. Would you read it back to him, please.

(The Court Reporter reads the question on Line 15 above.)

A. I don't know what you mean by a substantial number, whether [55] you mean 10 or 30%.

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Q. Tell me how many or percentage, either one. A. I never made a survey, I don't know. I don't know of any survey that's been made as to the number.

Q. You're saying you don't know how many are in favor of it or how many are against it, the only thing you know is your own opinion, is this correct? A. I didn't say it was my opinion, Mr. Waggoner. I just quoted one of the nation's most outstanding authorities on this matter.

Q. Is he the only one that you know of, then? A. Of course not.

Q. Who are the other ones? A. (No answer given.)

Q. Since there has been no answer, I'll go on to something else. A. I was wondering how to respond to that. I think there are a large number of educators who are. It's obvious that many cities are carrying out desegregation plans because they think it's sound educationally. It's clear that a number of people have done analyses of the Coleman Report and have reported on the adequacy of that study and of the expectancies that one can have from desegregated schools. I think there is a substantial body of knowledge concerning the expected outcomes from desegregation.

Q. All right. You have told me of those who support your [56] position. Are there any that don't support your position? A. I don't know of any research studies that show that children do not benefit from attending desegregated schools.

Q. That's not the question I asked you. A. I know that there are some high school principals and school principals here in Charlotte who oppose it. Is that what you want me to say?

Q. I'm asking you to say whatever you have knowledge of.

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Mr. Chambers: What's the question about?

Mr. Waggoner: We spent 15 minutes asking Dr. Finger if he knows the degree of dispute among educators as to the relative advantages and disadvantages of transporting elementary children ten miles to achieve a desegregated education. The question relates to whether or not the advantages of transportation outweigh the advantages of desegregation, the type of transportation we have in the Charlotte system.

Mr. Chambers: Your question is whether the advantages of transportation outweigh the advantages of desegregation?

Mr. Waggoner: Whether the disadvantages of transportation outweigh the advantages of desegregation.

A. I don't think that's an equation. I think that it's demonstrated that there are educational advantages to be obtained [57] from desegregation and there is a body of research that supports that.

Q. Well, I won't pursue that line of questioning any more. Now, you have had great quarrel with Mr. Morgan's transportation figures. Let me see if I can ask this question to bring some light on the matter. The Board plan, utilizing the requirements of State law, will bus approximately 4900 students. Is this reasonably correct, additional students?

A. That's reasonably correct, yes. This is according to the Morgan affidavit.

Q. And your plan proposed adding to that the cross busing of approximately 10,000 black and white students, is that correct? A. Yes, that's correct.

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Q. So you're somewhere in the neighborhood of 14,000 students, is that correct? A. That's correct.

Q. In addition your plan would furnish transportation to all students who reside within a mile and a half, whether or not they are eligible for transportation, is this correct? . . . under State law. A. No, that's not correct.

Q. Well, let's take a look at your report. A. I have already testified that one should differentiate between the recommendation to the Court about walking and the equal [58] treatment of children. That recommendation would apply under either plan, whether it was the Board plan or the court consultant plan.

Q. But the Board didn't choose to adopt that, did it? A. The Board doesn't choose to . . . the Board didn't choose to adopt that.

Q. So the Board figures 4900 to the best of your knowledge. A. If we count children in the same way, the Board plan calls for the transportation of approximately 4500 children and the court consultant plan calls for that same number plus 10,000 children to be bused under pairing. Under either plan, if transportation is provided to children who must walk more than a mile and a half, there will be additional transportation and in my opinion that additional amount will be about the same under either plan.

Q. That's correct. Now, you're familiar with the fact that Judge McMillan's order of February 5th provided that the School Board would determine a walking distance and furnish transportation to every student whose attendance at school is required for desegregation, is that correct? I direct you to Page 3, Paragraph 7. A. The Court ordered: "That transportation be offered on a uniform non-racial basis to all children whose attendance in any school is necessary to bring about the reduction of segregation, and

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who live farther from the school to which they [59] are assigned than the Board determines to be walking distance."

Q. Now, under your balancing arrangement the attendance of any child at a school affects the degree of desegregation that school has, does it not? I'm sorry, I'll pick it up again. You have imposed and so has the Court imposed a balancing of races within the schools, is this correct?

A. I don't know.

Q. I mean, this was your goal, to achieve as much balance as reasonably possible, is this correct? A. In my report to the Court I defined a desegregated school and then I attempted to have all schools meet that definition.

Q. This definition was an attempt to meet as much of a racial balance as possible, is this correct? A. I already answered that question.

Q. Will you answer it again? A. Yes. I defined a desegregated school in my report to the Court and I tried to have all the schools fall within that definition of a desegregated school.

Q. And this involves racial balance, does it not? A. Those are your words, not mine.

Q. I'm asking you. A. I'll answer that question the same way I answered it before. I defined a desegregated school and I attempted to have all the schools fall within that definition.

Q. We don't have the privilege of a Court present. Will you [60] answer my question?

Mr. Chambers: I object to that. I think the witness has already answered the question.

Mr. Waggoner: He can answer it yes or no and he can explain it.

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Mr. Chambers: He's given you an answer, he's told you what he did. You just want him to say something he hasn't said.

Mr. Waggoner: He can say it's a racial balance or it's not a racial balance.

A. I don't know what a racial balance is. That's why I used the language I used here.

Q. You don't know what a racial balance is. All right.

Mr. Chambers: How are you defining racial balance?

Mr. Waggoner: Racial balance is similar to what the judge indicated in his prior order, it should be approximately the same number of students of each race in each school.

Mr. Chambers: I want to call the Court's attention at this time to the Court decision of February 5th. The language of that opinion appears on Page 2, bottom of the page, and continuing on Page 3.

(The Court Reporter at this point in the proceedings reminded [61] counsel it was 5:00 and that it had been ordered that the deposition of Mr. Morgan begin precisely at 5:00 o'clock.)

Mr. Waggoner: I'd like to continue.

Are you talking about the statement of the Judge?

Mr. Chambers: Yes.

Mr. Waggoner: I'm asking this gentleman what his definition is.

Mr. Chambers: Definition of a racial balance?

Mr. Waggoner: Yes.

Mr. Chambers: Are you asking him a racial balance and asking him to define what you mean by racial balance?

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Mr. Waggoner: If he can define the term racial balance.

Q. Can you do this? A. Mr. Waggoner, I already testified to the fact that I was required to carry out an order of the Court which required me to draw up a plan which ended up with no all black schools. In order for me to carry out that order, I needed to have some kind of definition to follow as to what constituted a desegregated school. So I defined it and I made it very clear that my definition was so that I could refer to the words desegregated schools in order to explain what procedures I was following. Now, if you wish to say that my definition of a desegregated school is racial balance, that is for you [62] to say. The Court has said that that was not his order and it is not the language that I used in my report to the Court.

Q. I'm asking you, then, did the results of your plan following the Court's instructions achieve a racial balance in the schools. A. I sometimes indicated that I thought it was unwise to allow the proportion of black students to be too disparent with those in all the rest of the schools in the county but I might have been following a rule similar to the one the Board of Education followed in drawing up its computer assigned attendance zones in which it set a limit of some kind of the proportion of black students in a school, I believe 40%.

Mr. Chambers: Can we go off the record one minute? Judge Warlick ordered us to depose Mr. Morgan at 5:00 o'clock. Dr. Finger has a 6:59 plane.

Mr. Waggoner: Julius, I'm extremely sorry but you have gone into a great deal of detail on transportation.

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Mr. Chambers: The only thing I mean is would you go ahead with Dr. Finger and then let us pick up Mr. Morgan?

Mr. Waggoner: We will waive Mr. Morgan until we get through here.

(The Court Reporter informed counsel that the above would [63] appear in the record in view of Judge Warlick's order to the Court Reporter to proceed with the examination of Mr. Morgan at 5:00 o'clock.)

Q. Do you interpret the language that students of all grades be assigned in such a way that as nearly as practicable the various schools at various grade levels have the same proportion of black and white students, would you interpret that as being an attempt to reach a racial balance?

Mr. Chambers: Where are you reading from?

Mr. Waggoner: I'm reading from the December 1 order.

Mr. Chambers: You're asking the witness to interpret the Court order?

Mr. Waggoner: No, this is the February 5th order, third page. I'm asking him if that is the balance he tried to achieve. I'm asking whatever my question was.

A. Where are you reading from?

Q. Page 3, February 5 order, paragraph 6. A. Well, the Court makes that statement on Page 3 and on the bottom of Page 2 he says that the order which follows is not based upon any requirement of racial balance.

Q. I understand that, but did you achieve racial balance in your results? A. May we take a

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[64] Q. Let's talk, let's stay on the record. I want to get out of here. A. I find that language of the Court a little puzzling. The Court did not use the language racial balance and neither did I. For some reason the Court avoided it and so do I.

Q. You're avoiding it because the Court did? A. Apparently there is some reason that you don't want to avoid it.

Q. That's correct. A. I can only answer the question as I did before. I defined desegregated schools and I tried to carry out, in effect, the statement here that pupils of all grades be assigned in such a way that as nearly as practicable the various schools at various grade levels have about the same proportion of black and white students, and that plan that I submitted to the Court in effect does that.

Q. Now, with reference to transportation, you're familiar with the fact that the Court originally ordered the furnishing of transportation to all students who live more than a walking distance whose presence at a school was necessary for desegregation, is this correct? A. Where do we find that again?

Q. Page 3.

Mr. Chambers: Objection to the question unless you're also going to read

[65] Mr. Waggoner: I will, give me time.

Mr. Chambers: You asked him what the Court directed. Why don't you put down what the Court said it directed?

Mr. Waggoner: Let me handle my examination.

Mr. Chambers: I don't think you ought to mislead the witness.

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Mr. Waggoner: I'm not misleading the witness. I'm just asking this.

A. You just read that statement a minute ago. You want to read it again?

Q. If you like, paragraph 7. A. "That transportation be offered on a uniform non-racial basis to all children whose attendance in any school is necessary to bring about the reduction of segregation, and who live farther from the school to which they are assigned than the Board determines to be walking distance." Now, I would have thought if the Board determined walking distance for one plan, they would determine it for another plan in the same way.

Q. All right. Now, with reference to this the Board established one and a half miles as a walking distance and it was on this basis that computations were made reflecting that 23,000 students would be transported under your plan. Do you dispute these figures? A. I have no way of judging.

[66] Q. Now, on March 3 the Court entered a supplemental order—and continue to refer to that paragraph—and he indicates there has been some misunderstanding concerning what he meant and he therefore amends the order by deleting the words "attendance in any school" and inserting the words "reassignment to any school" Do you understand this to mean that any student who lives in his old attendance district and is in a school and resides more than a mile and a half will not be furnished transportation?

Mr. Chambers: Are you asking him to interpret the Court's decision?

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Mr. Waggoner: I'm asking him to interpret this to see that he understands my next question.

A. As I read the entire Court order it seems to me that the Court is saying that his new revision is such that approximately 4500 plus the 10,000 we have been talking about would be the number of children he is ordering the Board to transport.

Q. Do you understand that the Board plan would not transport students in the AG district and your plan would and the Court ordered plan would? A. Will you explain to me why? . . . I'm the one to testify. What's your question, Mr. Waggoner? Do I understand . . . no, I don't understand it that way. No, I don't.

Q. The Board plan will not furnish transportation to any student [67] who resides in the city limits and attends the city school. Do you understand that, the city limits of '57? A. Yes.

Q. Your plan would and so would the Judge's for those who have been reassigned. A. Yes, that's correct, Mr. Waggoner.

Q. Now, the computations you made didn't take into consideration the original Court order requirement for transportation of all students within a walking distance.

Mr. Chambers: Objection to that because that is not the original Court order.

Mr. Waggoner: There was enough misunderstanding about it for the Judge to write another order.

Mr. Chambers: The interpretation given the order by the School Board and nobody else. I think the question is unfair and misleading to this witness and I object to the form of the question.

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A. What's the question?

Q. Would you read it back?

(The Court Reporter reads the question on Line 7 above.)

Q. Whose presence is required for desegregation. A. I didn't calculate students the same way Mr. Morgan did.

Q. Would you answer the question and then explain if you wish? A. I thought I did answer the question, didn't I? Apparently Mr. Morgan was certainly counting a different kind of student [68] than I was.

Q. Tell me what students you counted, Dr. Finger. A. Well, let's see if we can reach some agreement what we're talking about so we have some clarity on this matter. It seems to me that when we talk about the students who are in schools that are involved in pairing that the amount of transportation required that I'm talking about is the same transportation that is now provided by the School Board because those are the same attendance zones that are now currently being used and that will be used in the future and that in addition to those students, for those students there is an additional amount of transportation required of 10,000 elementary students. Now, when I read Mr. Morgan's figures I find that his estimates for elementary transportation exceed that amount and I would think for clarity what I've been talking about for those schools that are to be paired that there is the present amount of transportation now provided by the Board of Education, plus the 10,000 students who would be bused to accomplish the pairing.

Q. Do I understand that you're saying that you would furnish transportation to those students who are entitled

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to transportation under State law plus the 10,000 students who are involved in cross busing? A. I don't see how I could make my statement more precise than I made it before and would prefer not to reword it.

【69】 Q. I didn't understand it. It doesn't agree with what I said. A. Well, we can go to any school district you want to at the elementary level like Huntingtown Farms and under the court consultant plan the school attendance zone for Huntingtown Farms is identical to the current attendance zone for Huntingtown Farms and all those students currently transported in that attendance zone would continue to be transported and that in addition some of those students would be transported to accomplish the pairing. Therefore, the amount of transportation under the elementary pairing plan would be the amount now being provided plus 10,000.

Q. In those 34 schools? A. Yes, sir, that's what we've been talking about.

Q. What other transportation would you provide? What other transportation did you provide in the figures that you gave me? A. None.

Q. You would only provide the 10,000 elementary students with transportation? A. We were talking just about elementary schools.

Q. All right. You would provide none for any other elementary students. A. OK.

Q. What other transportation would you provide for junior high schools? 【70】 A. Let's make sure that question is clear because there are some students who are currently being transported who would continue to be transported. They might be assigned to a different school and I do not know whether the amount of transportation would increase

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or not. For example, I look at the Amay James District and I see that there are some children that are going to be transported, I presume they are going to be transported to Amay James School. They're entitled to it. Those students are being transported to some school now. So that it's my opinion that the total amount of transportation involved in this system would be that amount currently being provided plus that amount which is involved in the pairing arrangement, the 10,000. Now, I talked about the 34 schools only to be very precise and point out that those attendance zones are identical to the attendance zones now being used. There are some other attendance zones that have been changed and as a result there might be some children transported to a different school, but presumably those children who are entitled to transportation would still be entitled to transportation. There might be some small changes and there might be some small increases but I assume that the number is approximately the same.

Q. All right. Let me ask you if this is a fair statement; that in the elementary schools that to get the students to Barringer School you would transport an additional 197 to the [70A] school so they could be picked up . . . wait a minute, that's not a cross busing school. Would you transport 197 students to Barringer School? A. I don't know what the question is, would I. What do you mean by that?

Q. Under your plan or under your computations. A. The consultant plan and the Board plan for Barringer are identical, are they not?

Q. That's correct. You said you wouldn't furnish any additional transportation on the elementary level to any other school. A. All those youngsters reside within a mile and a half of the school.

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Q. Is that the linear distance or is that the road distance?

A. Well, do you want to come look at the boundary? None of those boundaries are more than, I don't believe by any way you want to figure it, more than a mile and a half for those children.

Q. I ask you to closely look at the boundary and not mistake the old boundary. A. Is that the boundary there?

Q. It sure is. A. That's just about a mile and a half. There may be a few children residing in there that exceed that distance.

Q. Would 197 be approximately correct? A. Might be.

[71] Q. Would you like to look at the Berryhill School while you're up and see if 274 would be transported? You understand that State law provides transportation by the nearest route and not a radius. A. I understand that. There are some children residing here, in this district here, which I presume are well beyond a mile and a half. Is that 190?

Q. 274. What about Billingsville? Would you transport 259 students to that school under your plan? A. Under the Board plan?

Q. Either plan. A. OK. If you say that's the number that live more than a mile and a half from the school.

Q. Then you would have transportation furnished to additional elementary students. A. I testified there might be some additional students that would be transported but that's a small number of students.

Q. This is without regard to whether or not they are re-assigned to that school or not, is that correct?

Mr. Chambers: Objection to the form of the question.

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A. I don't understand your question, Mr. Waggoner. These are elementary school children who, under the Board developed plan utilizing these computer assignment system, end up residing more than a mile and a half and are therefore [72] entitled to transportation as elementary school students. Is that correct?

Q. That's correct. And they are eligible under State law for transportation. When did you make your computations with respect to transportation? . . . the requirements as far as numbers of buses and numbers of students. A. Within the last few days.

Q. Within the last few days. When did you first see Mr. Morgan's affidavit? A. This morning.

Q. At what time? A. 10:12.

Q. Did you spend the entire time prior to 12:00 o'clock studying that affidavit? A. Yes, I did.

Q. You made comparisons during that time? A. Yes, sir.

Q. So in an hour and forty minutes you're in a position to question the extensive transportation contained in Mr. Morgan's affidavit? A. It's quite clear, as I have testified over and over again, that Mr. Morgan is following a different set of rules and that we're talking about the same school attendance zones and under one set of rules you transport a lot of children and under a different set of rules you transport a different [73] number of children. I think it's important to understand that the attendance zones are the same or nearly the same.

Q. The point I'm trying to get across, Dr. Finger, is that the Board, as you say, uses one set of rules in which they will furnish transportation to students who are eligible under State law for transportation and in your report to the Court you indicated that transportation should be fur-

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nished to all students residing more than a mile and a half from the school irrespective of State law.

Mr. Chambers: Are we talking about Dr. Finger's recommendations or what the Court directed?

Mr. Waggoner: I'm talking about his recommendation just now.

A. What page is that on?

Q. 10 or 12. A. Right of student to be transported. Students residing more than one and a half miles from the school should not be penalized by having to walk to school, or penalized financially by having to pay for public transportation. Students residing more than one and one-half miles from the school to which they are assigned should receive free transportation. The School Board should either provide for free public transportation or provide school buses. I recommended that to the Court.

Q. Have you made any computation with reference to the number of [74] students who would be transported under that definition? A. No, I have not.

Q. You cannot, then, dispute the 23,00 figure that Mr. Morgan has developed, is that correct?

Mr. Chambers: Are you suggesting that Mr Morgan used the recommendations of the Court order?

Mr. Waggoner: I'm talking with reference to the recommendation.

A. I would have thought Mr. Morgan followed the Court order.

Q. Will you answer my question? A. What is the question?

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Q. You have no reason to dispute Mr. Morgan's figure of 23,000 students. A. I answered that question once. I said the answer to that was no, I have no reason to dispute it. I have no basis for judging it.

Q. When did you first see the amendment to the Judge's order with reference to his order of February 5? A. It was on my mantel at home special delivery, airmail, at 7:00 o'clock last night when I got home from school.

Q. Have you made a computation with reference to the number of students who would have to be transported under the Judge's amended order? A. I believe that we have completed talking about the number of children to be transported under the Judge's amended order [75] for elementary schools, that we have completed that. I believe the numbers we have been talking about for elementary schools are essentially those that complied with the Judge's amended order.

Q. On the elementary level? A. On the elementary level.

Q. And what total did you come up with? A. I thought we had said that a half-dozen times.

Q. You haven't told me. A. We just pointed out a few instances, did we not, that involved several hundred children that I did not count. So that we have talked about, in addition to the 10,000, apparently there are a small number of additional children who must be transported to their elementary schools. I do not know the exact number of these but I assume that we have substantially covered most of these in the recent testimony.

Q. Well, would it surprise you if I told you that the figures I was reading related to the transportation requirements under the Board plan? I will withdraw the question. Dr. Finger, you haven't made a careful study of the transportation requirements as required by the amended Court

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order of February 5th and March 3, have you? A. I made some estimates.

Q. All right, will you give them to me? A. I need a little advice. I don't know which attorney to turn [76] to for advice, you know. I'm off the record there.

Q. Leave it on the record. A. May I have a five minute recess?

Mr. Chambers: Yes.

Mr. Waggoner: I would prefer to go ahead and finish. If you want to take time and think, that's all right. I don't want to interrupt now.

Mr. Chambers: Do you have a question, Dr. Finger?

A. I just need to be sure I understand the Court order so that I understand this question so that I know exactly what I'm testifying to. Let me see now. I think those are all the estimates I have been talking about. Excuse me, where is this revised order?

Mr. Chambers: We can take a recess if Dr. Finger has a question he wants to ask.

Mr. Waggoner: Let him ask it in the presence of everyone.

Mr. Chambers: If you don't understand the question posed by counsel, tell him you don't understand the question, unless he wants to take a break to find out exactly what his question is about.

Mr. Waggoner: He can ask and we can put it on the record, there's no objection to that. He can ask me and I'll respond as best I can.

A. As I understand the language of the Court order, the

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Court has [77] said that whether the Court consultant plan is adopted or whether the Board plan is adopted that certain children are entitled to transportation under that plan and that children residing in these satellite zones here would be required to be provided with transportation. Is that your interpretation?

Q. That's a part of it. Let me direct your attention to Randolph Junior High School. Randolph Junior High is located here. There is a neck that goes on past the Billingsville area to pick up black students. These students in this neck do not reside in this district. They have been reassigned to the school and would be furnished transportation, as I understand the Court order. Have you made a computation as to the number of students who would be required to be furnished transportation at Randolph Junior High School? A. I think I have and I want to be sure that I have and that the testimony that I give is correct and accurate. Yes, I have made such an examination. I counted as follows: For Alexander Graham Junior High School 360 students.

Q. That's a result of your satellite zone? A. Yes, sir.

Q. That is all it includes, is that correct? A. Yes, that's correct. I have based the estimates of the number of buses that would be required to transport junior high school students on the number of students reported by the school department according to State regulations and in [78] addition I have made an analysis of the number of students in the satellite zones; for Alexander Graham 360; for McClintock 325; for Quail Hollow 274; for Carmel Road 142.

Q. Let me interrupt you for a minute, Dr. Finger. You have not taken into consideration any other students who may have been reassigned to that school who are not in

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the satellite zone, is that correct? A. Unless they were included in the original report that the school department submitted to me.

Q. You're familiar with the fact that the report submitted to you by the school department was purely for students eligible under State law for transportation? A. I have testified to that a number of times, yes, sir.

Q. All right, and that the school department's report doesn't include reassigned students in the Alexander Graham district and you've made no allowance for that, have you? A. Mr. Waggoner, I looked at the plan proposed by the Board, I examined the transportation estimates prepared by Mr. Morgan and listed under the Board plan, and I observed that there were some children who lived a long distance from the school. In estimating the number of children who might be entitled to transportation, I counted the children who were in the satellite zones.

Q. Then you have not taken into account any other students who may have been reassigned to that school other than those [79] living in the satellite zones. A. Well, that's not wholly true. I noted this Sedgefield neck up here and I made an estimate of the number of students that resided there and counted them.

Q. Did you take into account any students who would attend Alexander Graham who reside in grids 402B and 403A? A. No, I did not.

Q. A similar situation would exist for any other students who have been reassigned and are not within satellite zones other than Sedgefield or a few other isolated areas. A. Well, as I read the Court order, the Court order talked about a walking distance and I would have assumed that the walking distance that the Board assigned under one plan would be the same as the walking distance that

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the Board assigned under some other plan and so I looked at the Board plan and the estimates of transportation under the Board plan and thought that that must be what the Board assigns as walking distance. So I don't see why the Board assigns two different walking distances under two different plans. So the reason I didn't count those students was because I assumed that they were within walking distance.

Q. Well, it's readily apparent that the students residing in the Alexander Graham attendance district as restructured under the court ordered plan, or your plan, in 402B and 403A reside more than a mile and a half from the school, isn't it? [80] About two miles, uh huh.

Q. Wouldn't it be closer to three by road? A. Two and a half to three miles. It's a good walk.

Q. You have overlooked similar students in the other districts, too, have you not? A. If we have, we better detail them so there is no misunderstanding as to what the transportation problem is and what the Court order is.

Q. I ask you address yourself to Smith Junior High School and tell me how many students there. A. When I look at the Board plan I go 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 grids. That's five miles as the crow flies. When I look at the Court ordered plan I see a much more compact attendance zone with a satellite and I have counted the satellite.

Q. You're familiar with the fact that the kids under the Board plan in Smith would be entitled to transportation under State law, are you not? A. No, I wasn't aware of that. They would be?

Q. They would be. A. How come?

Q. It's located in the perimeter area. A. It would be helpful if we had a map with the perimeter area around it.

Q. The Judge requested this. A. Let's not confuse the record, then, on these matters.

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[81] Q. The point I'm trying to make is that you haven't considered all the students who would be furnished transportation under the Court ordered plan in the figures you have given Mr. Chambers, is that correct? A. I certainly have made fair estimates of the amount of transportation required and when the School Board is claiming that 23,000 students are to be transported, they are making claims made on or based on a set of rules which now appear to be not in the language of the Court.

SHORT RECESS

Q. Dr. Finger, I don't believe you answered my last question. You gave an answer but I don't think it was in direct response to it. Would you read the question back?

(The Court Reporter reads the question in Line 1 above and the answer in Line 5 above.)

Q. That's wholly unresponsive.

Mr. Chambers: That's not good enough?

Mr. Waggoner: No.

Mr. Chambers: What do you want him to say?

Mr. Waggoner: I want him to tell me whether or not these figures are accurate and whether he's considered every student that would be furnished transportation under the court ordered plan. He already indicated that he has not.

Mr. Chambers: That's your interpretation, Mr. **[82]** Waggoner.

A. I have made estimates at the junior high school level that includes students not reported by the school depart-

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ment in their report that was prepared for the Court. As a matter of fact, I have made a range of estimates as to the number of students who might be transported at the junior high school level and I estimate this number to be between 3500 and 4000. Now, I believe to the best of my knowledge and belief that I have counted all of the students and when I reported on the number of buses that would be required, I believe I counted all of those children. To avoid any possibility of misunderstanding, let's just check and make sure. If there are 3500 additional junior high school students to be transported, that would require 78 45-passenger school buses.

Q. Does this assume full capacity use of the buses?

A. I was counting 45 students in a bus, yes, sir. One might assign more students to the bus than the bus would hold.

Q. In making that computation did you consider students who are not in the satellite zones who are reassigned to those junior high schools?

Mr. Chambers: Haven't we gone over that, Mr. Waggoner?

Mr. Waggoner: He comes back with a positive statement this is all that would be required and I'm not going to leave it to conjecture that he has [83] recomputed the thing and added these students back in.

Mr. Chambers: I think the witness testified on two or three different occasions to the same question you have just posed.

Mr. Waggoner: Well, I want to make certain that the record is very clear that this 500 that he has estimated does not include those students who were reassigned and do not reside in the satellite zones.

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Mr. Chambers: He just testified to the contrary.

Mr. Waggoner: He did not. Let him answer the question.

Mr. Chambers: You mentioned harassing. I think the questions that you continually are asking now are purely harassment.

Mr. Waggoner: If I could get straightforward answer from the witness, we could go on.

Mr. Chambers: I think the witness has given straightforward answers.

Mr. Waggoner: We'll let the record speak for itself.

A. Perhaps, Mr. Waggoner, we should go through these junior high schools district by district and count the amount of transportation that would be required so that there is absolutely no misunderstanding as to what transportation is [84] or is not needed. It is not easy to estimate the amount of transportation since some of the children who will be attending a junior high school under the court ordered plan were riding the school bus to a different junior high school and so there is always the question of when you are talking about a new student going to a junior high school and one who is currently riding a school bus.

Q. It's quite satisfactory with me if we go through the junior high schools school by school. I hope we don't have to do it. A. If we have to clarify the testimony, then I think we should.

Q. I think we should, too. With reference to Albemarle Road, I would like for you to estimate the number of students who will be furnished transportation or additional students who will be furnished transportation under the

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court ordered plan. Do you have your demographic chart with you? A. No.

Q. On what basis can you make such an estimate, then?
A. With regard to the Albemarle Road School the original report of the school department on transportation required under State law was 297. Mr. Morgan estimates in his affidavit that there are 267 students to be transported. Now, I believe that when Mr. Morgan is counting these 297 students, he is talking about transporting these students to a school that is outside the city limits and that that's the number of students that [85] he reported being transferred to that school. Another way. . . .

Q. Let me direct your attention to. . . .

Mr. Chambers: Let the witness finish.

A. Another way that I could get that figure would be to read the number of black students assigned to Albemarle Road School. There are 292 black students in Albemarle Road School. Well, I can get my it's right here. At the present time there are 63 black students in Albemarle Road School and I don't have the demographic maps with me. I assume those 63 black students live in that attendance zone. So if I were to make an accurate count of the number of students required to be transported to the Albemarle Road School, it would be essentially those students currently attending Albemarle Road School or some other students eligible for transportation to that school, plus the number of black students residing in ~~that~~ attendance zone. Now, my estimate of the number was 297 but I see that my estimate is on the high side because indeed, 63 black students already go there, so that the correct number of students to be transported might be somewhere more near 239.

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Q. Now, the estimate that you have of 297 and 267 were furnished to you by Mr. Morgan, were they not? A. Yes, sir, that's right.

Q. And you accept them as reliable. A. I don't know that Mr. Morgan submitted the 297. The school [86] department was requested to supply those to me. I presume that Mr. Morgan did those. I never questioned Mr. Morgan's reliability.

Q. You do not question him? A. I never have, no, sir. I question the rules under which he was conducting the counting, not his reliability.

Q. Isn't this the basic difference in the counts we're coming up with, Mr. Morgan was using one set of rules, that the Board adopted a policy that they would furnish transportation where permitted by State law so the State would share part of the expense, is this not correct? A. Repeat the question.

(The Court Reporter reads the question on Line 7 above.)

A. It's correct that we were operating under a different set of rules. What else do you want me to say?

Q. Well, I'd like to define these rules so the Court can understand what rules you were operating under and what ones he was operating under, and as I understand your junior high attendance areas you were operating under the rule that you would furnish transportation from the satellite districts only except in a few isolated cases where students seemed to be located long distances from the school you would furnish transportation under your figures. Is that a fair statement? A. Yes.

Q. And that would likewise hold true on the elementary

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and senior [87] high schools, too, would it not? A. I was trying to make estimates of the actual amount of transportation that would be required to carry out what I conceived of the desegregation plan.

Q. You made your computations several days ago, is that correct? A. I believe I testified it was even more recently than that.

Q. And you received the Court order last night is that correct? A. That's correct.

Q. And you have just begun to understand the Court order this afternoon.

Mr. Chambers: Can we define which court order you're talking about?

Mr. Waggoner: March 3, amending the February 5 order.

A. I would say it's correct, Mr. Waggoner, that I did not understand why there were the reports on the transportation of 23,000 students that I read in the newspapers.

Q. Read the question back, please.

(The Court Reporter reads the question on Line 9 above.)

A. I just saw it last night for the first time.

Q. And you gained an understanding of it this afternoon, is that correct?

Mr. Chambers: May I inquire what you mean by gaining an understanding of it? From whom?

Mr. Waggoner: Knew what it meant.

[88] Mr. Chambers: As defined by whom?

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Mr. Waggoner: By its own language, satisfactory to himself.

A. Well, it seems to me that the estimates that I have given for transportation are pretty much consistent with the amended court order.

Q. And you're saying the estimates you made before receiving the Court order are still accurate to your satisfaction—as complying with estimates you would make under the Court order. A. I just testified a few moments ago that if we want to improve upon the accuracy of the testimony that I have given that we had better go through the junior high schools one by one and get an accurate estimate of the exact amount of transportation that is required. It's my understanding that the Court has ordered the school department to prepare such plans and that when these plans are prepared we will have a much more accurate estimate of the actual transportation under the Court order than we can get here.

Q. Would you submit that the estimates developed by Mr. Morgan and his staff would be much more accurate than those you have testified to today with respect to defining transportation requirements under the Court order of February 5 and March 3?

Mr. Chambers: How can this witness say that?

Mr. Waggoner: Well, I'm just asking him.

Mr. Chambers: Are you asking him if Mr. Morgan [89] had available the detailed demographic maps to make an estimate or are you asking him to testify that Mr. Morgan is going to tell the truth? I don't think you want to put this witness in that position. It isn't fair to even ask that question.

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Mr. Waggoner: I would like an answer.

Mr. Chambers: I object to the form of the question.

A. I have consistently said from the very outset that the school department is the one most capable of drawing the accurate estimates, the ones most capable of drawing a desegregation plan. The plan that was submitted to the Court was submitted because it was a plan that the school department felt was a feasible one. So my answer to that question would, of course, be yes.

Q. Have you at any time defined for the Court the students whom you would recommend that transportation be furnished by grid numbers of grid code? A. No, I have not.

Q. By any other method? A. No, I have not. The total amount of information submitted to the Court on transportation is this prepared by the school department.

Q. Was this prepared by the school department at your request? A. Yes, it was.

[90] Q. Was it submitted in this form to the Court? A. It was submitted in this form to the Court with the notation that it should not be part of my report since I could not attest to it.

Q. And did you instruct the Court to remove the transportation information contained on this exhibit that is attached to his court order of February 5? A. I reported to the Court that I had no knowledge about that, that it had been prepared by the school department and that, therefore, I could only provide the Court with whatever it said there and the Court decided that, therefore, it should not be incorporated as part of my report.

Q. Did you have any similar reservations with reference

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to the numbers of students who would be attending the various schools which were also prepared by the school department? A. No, because we counted those together.

Q. You counted those together. A. We counted them so many times you get to be pretty sure of what things are.

Q. Do you have any information as to the total number of students who have been reassigned as a result of the Court order of February 5 as amended? A. Well, we can quickly count the number of students reassigned in the paired schools since those students are in the same attendance zones they were in before. I have not counted [91] the actual number of children who will change schools because of the redrawing of attendance zones at any of the grade levels.

Q. It's a fairly detailed job. A. It's a fairly detailed job. We could obtain that information. In some cases it's a sizeable number. For example, most of the children attending West Charlotte are reassigned. That's the school that has the most reassignment. Independence High School has very few children reassigned.

Q. On what basis did you come to the conclusion that the school department had overestimated the number of students who would need transportation at Smith? I think you testified that 300 would be a more accurate figure than the 413. On what basis did you reach this conclusion? A. Well, I reached this conclusion based on the fact that there are 350 black students assigned to Smith and presumably this is the group count of this satellite here and that these children in the geographic area surrounding Smith would all walk in. I thought that that might be an overestimate I also noted that

Q. Let me ask you on that, did you have a demographic chart before you at the time you made this estimate? A.

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No, I did not. I also noted that Mr. Morgan, in his second report, noted 360 students in there, so I just questioned that. I didn't make a big thing about it.

【92】 Q. Mr. Chambers asked you about showing residences of the students and that you were only furnished with grids showing the populations within racially. This is not unusual in a system this size to not get information that is broken down by actual location of residences within a school district, is it? A. Well, nothing is really very usual these days in school demographics. I have suggested to the school department that they could probably improve their attendance zoning if they would be able to split those grids into quarters. I'm sure they'll do it if they can find time to do it.

Q. Dr. Finger, in connection with describing the difference in the two plans, I made a note that you testified that you made the ratios of the races equal in all grade levels to the extent you could. Do you recall testifying to that? A. I believe that that falls within my definition of a desegregated school in which I explicitly say by more than 5% of the proportions in all of the schools at that school level.

Q. But you did try to establish a racial ratio, though, you didn't try to establish a racial balance. Would that be a fair statement? A. I tried to define desegregated school and have all schools fall within my definition.

Q. It's obvious I'm not going to get an answer to that one. Dr. Finger, in establishing these ratios or a desegregated 【93】 system, the attendance of any student of either race would be necessary to maintain the level of desegregation in that school, would it not? A. That sounds like a yes question but I'll ask for it to be repeated.

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(The Court Reporter reads the question on Line 25, Page 92.)

A. I guess that would fall under my requirement that the school department should be required to assign and re-assign students to maintain desegregated schools.

Q. Dr. Finger, with reference to priorities from an educator's standpoint, would you furnish transportation to the students in districts who need transportation or would you furnish transportation on a long-distance basis—strike that long-distance—on a distant pairing arrangement—I got lost in my question. A. That's good, so did I.

Q. With reference to priorities of furnishing transportation, as an educator would you prefer to furnish in-district transportation to students or furnish transportation in cross busing?

Mr. Chambers: Objection to the form of the question.

A. I don't think I have any druthers on that matter.

Q. If in-district transportation would permit two bus runs per day for shift change, would you prefer in-district busing [94] against cross busing where you could only utilize a bus one way, one trip each school opening or closing? A. I've already testified to the fact that these buses could be used in two different ways on cross busing and there would not be a single run. I have testified to the fact that the buses could either be run a double run at the elementary school level or that there could be sufficient buses for one run on each way with the elementary school children but that the time schedule for junior and senior high schools be such that junior and senior high school students could be transported on the same bus that was used for elementary schools.

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Q. All right. I'll repeat my question and assume that you do not go to staggering of opening of school hours.

A. Well, your question is very ambiguous because I don't know what is meant by in-district busing.

Q. That's the transportation of students to a school in the district in which they live. A. The district in which a student lives is an arbitrary affair. It's anything the School Board makes it.

Q. With reference to the School Board plan or your plan or the Court plan. A. Didn't I already say I didn't have any druthers about that matter?

Q. You didn't say with reference to where a bus could operate two trips per school opening. The other related to one. [95] A. I not only don't understand the question, I don't understand the relevance of the question. I just don't see what you want me to say.

Q. I think it's very obvious that if you can get two children to school instead of one child to school with the same bus is the relevance of the question. A. I was ordered by the Court to prepare a plan that met the Court order.

Q. You were employed as an educational consultant and you testified as an expert in this case and I think I'm entitled to your opinion. A. I have no opinion on that matter.

Q. No opinion. Have your school duties ever involved the procuring of transportation equipment? A. No.

Q. Are you familiar with the delays that are involved in acquiring transportation equipment?

Mr. Chambers: Objection.

A. I read Mr. Morgan's testimony.

Q. Is that the first time you were aware of it?

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Mr. Chambers: I object to that.

A. No. It would be hard to spend twenty-five years in education and not be aware of problems like that.

Q. So they do exist. Now, one point. You started out with 308 buses. How many students would you propose transporting? [96] A. I already testified I was making my calculations based on 45 students per bus. I can multiply this 45 by 308 and I would get 13,800.

Q. This is the number of students that you have calculated would be transported under your figures, is that correct? A. Yes, that's correct. That's the number of additional buses.

Q. Have you driven the nearest routes between the paired schools at the time that buses would ordinarily be transporting students? A. I don't know what time the buses would ordinarily be transporting students.

Q. You suggested 8:00 o'clock. A. I used that only as an illustration.

Q. You also gave us a figure of thirty minutes one way. Do you know if this is accurate? A. No, I don't know. I note that there are some estimates that are made as to the length of time that is required and they run to several hours and I think somebody ought to go out and find out. I think it's true and I think it's important to emphasize one of the things in the testimony and that is some busing transportation include the pickup time. The cross busing does not involve any pickup time, it involves no stops. It does not tie up traffic because they are not stopping to let children on and off the bus.

Q. Well, that depends on whether you pick the students up at the [97] school or whether you pick them up on the route. A. If you pick them up on the route, you're picking

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them up on the route the buses are already picking them up.

Q. Does your thirty-minute estimate cover that time? A. No, it does not.

Q. So it could possibly be another thirty-minute pickup time. A. I have already testified that my estimate was based on the fact that the children would arrive at the school on the pickup bus because in some instances all of the children in an area would be being picked up, 1st, 2nd, 3rd, 4th, 5th, 6th graders. They would arrive at the school together. The 1st, 2nd, 3rd and 4th graders would stay at that school and the 5th and 6th graders would be transported.

Q. Do you find the 5th and 6th graders would be waiting for other buses to come so they could fill the express bus? A. Well, I'm sure Mr. Morgan can work it out so that waiting time would be minimized.

Q. Your experience at schools indicates that school buses arrive sometimes as much as a half an hour apart, does it not? A. Well, in many instances there are going to be more than one bus on the express run, all instances.

Q. I'm speaking with reference to getting the students to the schools. A. They'll arrive at different times.

Q. Are you still of the opinion that the desegregation plan [98] ordered by the Court can be implemented with 109 buses? A. I have testified a number of times that this plan can be initiated section by section and that the accurate estimate of the exact amount of transportation that will be required will best be found out as the plan is implemented and we noted that any one of the pairs could be operated with only a small number of buses. That's another way of saying I do not know the exact number of buses that would be required. We have gone through the various strategies

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that might be followed to reduce the number required and the plan is one that can be implemented on a phased-in basis.

Q. What written communications have you had with the Court in connection with your services as a Court consultant? A. I have written him a couple of personal letters and he has written some to me. I submitted the Court plan. I wrote him a letter after I received the attachments to the Court plan which gave some additional detail on my recommendations relative to that attachment.

Q. Did you make additional recommendations? A. As I read over those recommendations, they seem to be the same as the recommendations submitted in my original report to the Court, but there is another letter that I submitted to him.

Q. That was submitted prior to February 5, is that correct? A. Yes, that's correct. He might not have gotten it by February [99] 5. I read it to him over the telephone. I also submitted a preliminary report which I labeled as a preliminary report for your personal perusal which indicated to him some of the thoughts that I had about the desegregation plans so that he would have some ideas as to what he might expect from me.

Q. Dr. Finger, do you regard the after-school activity of children as being important in their total educational growth? A. Yes.

Q. Do you feel that staggered school hours would interfere with their participation in the after-school activities? A. It wouldn't necessarily. One might be able to devise both curricular and extracurricular activity that took advantage of the staggered hours.

Q. In other words, it would involve more than just dis-

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rupting the school system, it would disrupt a lot of private activities. A. Those are your words, Mr. Waggoner, they are not my words at all.

Q. I'm asking you. A. I did not say that at all. I did not say that at all, Mr. Waggoner. I said that the staggered school hours could be utilized to develop plans that would make use of the staggered school hours.

Q. But it would require changes in other activities, would it not? [100] A. It might require some different activities and some different plans.

Mr. Waggoner: I have no further questions.

CERTIFICATE

I, Evelyn S. Berger, Notary Public/Reporter, do hereby certify that Dr. John A. Finger was duly sworn by me prior to the taking of the foregoing deposition; that said deposition was taken and transcribed by me; and that the foregoing 100 pages constitute a true, complete and accurate transcript of the testimony of the said witness. I further certify that the persons were present as stated in the caption.

I further certify that I am not of counsel for, or in the employment of any of the parties to this action, nor am I interested in the results of this action.

In witness whereof, I have hereunto subscribed my name this 14th day of March, 1970.

/s/ EVELYN S. BERGER
Notary Public in and for
County of Mecklenburg
State of North Carolina

**Defendants' Response to Plaintiffs'
Request for Admissions**

(Filed March 13, 1970)

The Defendants Charlotte-Mecklenburg Board of Education et al., acting through William C. Self, Superintendent of the Charlotte-Mecklenburg Public Schools, respond to the Plaintiffs' Request for Admissions as follows, in each instance the paragraph numbers in this Response corresponding to the paragraph numbers in the Plaintiffs' Request:

1. Charlotte City Board of Education and Mecklenburg County Board of Education operated separate school systems until 1961 when they consolidated as the Charlotte-Mecklenburg Board of Education. For a number of years prior to 1961 the County (but not the City) Board of Education operated public school buses to transport students to and from school. In conformity with State law as it existed prior to 1961 and prior to consolidation of the two systems, the Mecklenburg County Board of Education operated and routed school buses in a fashion that some transported only negro students to negro schools and some transported only white students to white schools. By reason thereof, the bus routes of the Mecklenburg County system overlapped and some negro students who may have resided near white schools were transported by such schools to all negro schools and some white students who may have lived near negro schools were transported by such schools to all white schools.

2. See Paragraph 1 hereof for response to Plaintiffs' Paragraph 2.

3. See Paragraph 1 hereof for response to Plaintiffs' Paragraph 3.

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4. Prior to 1961 the Charlotte City Board of Education did not operate a public school bus system and, therefore, did not operate public school buses to transport students to and from school, did not transport negro students to negro schools and white children to white schools and did not have bus routes overlapping or otherwise.

5. See Paragraph 4 hereof for response to Plaintiffs' Paragraph 5.

6. See Paragraph 4 hereof for response to Plaintiffs' Paragraph 6.

7. Following the merger of the County and City School Boards in 1961 the consolidated Board provided transportation for students who resided in the portion of Mecklenburg County located outside the city limits as they existed immediately prior to the 1967 annexation who resided more than $1\frac{1}{2}$ miles from the schools to which they were assigned, such transportation being in conformity with that prescribed by State law.

8. That since 1961 and until the closing or reorganization of the 10 all negro schools in the County in 1966, the consolidated Board provided separate bus service for some negro and white students.

9. Pursuant to the Plan approved by the Court in August, 1969, the School Board has provided transportation for approximately 767 inner city black students to be transported to white residential areas of the City and County. These 767 inner city black students are a portion of a much larger number of such students who were granted

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*Defendants' Response to Plaintiffs'
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by the Board a freedom of choice arrangement pursuant to which they could elect to remain in schools near their homes or to attend schools in the predominately white residential areas. The approximately 767 inner city black students represent those who elected to attend the schools in the predominately white residential areas. The transportation referred to above was made available to such students in order to encourage their attendance at these schools. The approximately 767 inner city black students referred to above in many instances passed other schools serving their grade levels on the way to the schools to which they were assigned pursuant to the above-mentioned freedom of choice arrangement.

/s/ **WILLIAM C. SELF**
William C. Self

SWORN to and SUBSCRIBED before me this
13th day of March, 1970.

/s/ **LILY R. McMAHON**

Notary Public

My commission expires:

August 1, 1970

**Submissions to Court in Response to March 6, 1970,
Order and Motion for Extension of Time**

(Filed March 13, 1970)

In compliance with the March 6, 1970 Order of this Court, the information and materials referred to therein (with the exception of Item 2) are attached, in each instance the respective items bearing an identifying number which corresponds to those set forth in that Order.

In addition the following items are submitted: (1) A map showing the pre-1957 city limits, the perimeter areas and rural areas with all senior high schools clearly located on it; and (2) Affidavit of Herman J. Hoose, Director of Traffic Engineering for the City of Charlotte, setting forth the number of vehicles in Mecklenburg County and other related data as requested by this Court on March 2, 1970.

Defendants respectfully move the Court that they be granted an extension of time until Monday, March 16, 1970, for the submission of Item 2 referred to in the March 6, 1970 Order of the Court and the other information requested by the Court of Appeals for the Fourth Circuit in the March 5, 1970 Order.

Respectfully submitted,

/s/ WILLIAM J. WAGGONER
William J. Waggoner

/s/ BENJ. S. HORACK
Benj. S. Horack

Attorneys for Defendants

ITEM 1

Summary of total number of children who live in the Pre-57 city limits,
Perimeter Area, and Rural Area.

	<u>Pre-57</u>	<u>Perimeter</u>	<u>Rural</u>	<u>Total</u>
Senior High Schools	6073	4429	6080	16,582
Junior High Schools	7411	6365	7499	21,275
Elementary Schools	<u>17,228</u>	<u>11,986</u>	<u>15,790</u>	<u>45,004</u>
GRAND TOTAL	30,712	22,780	29,369	82,861

CITY OF LOYTE-HECKLENBURG SENIOR HIGH SCHOOLS

Total Number Children who live

	(1) Pre-57		(2) Perimeter		(3) Rural		TOTAL	
	Black	White	Black	White	Black	White	Black	White
East Hecklenburg	159	401	9	836	39	642	207	1479
Garinier	381	951	41	908	9	109	431	2048
Harding	583	457	10	203			593	660
Independence	45	18	2	13	73	1049	120	1068
Myers Park	203	1355		358		17	203	1780
North Hecklenburg			27	6	413	1139	440	1168
Olympic	80	23	105	30	180	447	365	902
South Hecklenburg	4	76	19	1197	72	701	95	1545
West Charlotte	1337		233				1570	
West Hecklenburg			78	354	58	1052	136	1424
TOTALS	2792	3281	524	3905	844	5236	4160	12441

CHARLOTTE-MECKLENBURG JUNIOR HIGH SCHOOLS

Total Number Children who live

	(1) Pre-57		(2) Perimeter		(3) Rural		TOTAL	
	Black	White	Black	White	Black	White	Black	White
Altamere Road				5	63	998	63	1003
Alexander					365	768	365	768
Cochrane		110	43	456	36	984	79	1550
Coulwood			2	31	104	722	106	753
Eastway	57	781	4	560			61	1341
Alexander Graham	101	674	12	334		19	113	1027
Hawthorne	591	365	5	71			555	436
Kennedy	552		291	6	5		848	6
McLinstock	50	38	1	607	42	650	93	1295
Northwest	916		145				1051	
Piedmont	445	51					445	51
Quail Hollow				361	155	1054	155	1425
Randolph	263	98	26	609			289	707
Ransom			83	10	177	538	260	548
Sedgefield	167	577		224			167	801
Smith	48	2	3	1011	4	421	55	1434
Spaugh	127	530	153	300			280	830
Williams	868		195	1			1053	1
Wilson			7	809	64	320	71	1129
F-600 (Cargill)								
F-601 (Gunn)								
TOTALS	4195	3225	970	5395	1015	5484	6170	15,105

CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

		Total Number Children who live							
		(1) Pre-57		(2) Perimeter		(3) Rural		TOTAL	
		Black	White	Black	White	Black	White	Black	White
	Albemarle Rd.	1	4	2	30	1	486	4	520
	Allenbrook				191	61	244	61	435
	Ashley Park	1	545	26	4			27	549
	Bain					33	739	33	739
	Barringer	698		194	16			892	16
	Berryhill			8	10	105	653	114	663
	Beverly Woods	66			102	2	589	68	691
	Billingsville	553		14				607	
	Briarwood			6		676	12	682	12
	Bruns Ave.	789	10					789	10
	Chantilly	5	478					5	478
	Clear Creek					51	252	51	252
	Collinswood		72	111	374		12	111	458
	Cornelius					195	245	195	245
	Cotswold	16	4	7	538			23	542
	Davidson					104	183	104	183
	Marie Davis	663		18				681	
	Dorito					163	684	163	684
	Dorchester		400		478		24		902
	Dilworth	119	345					119	345
	Double Oaks	805						805	
	Gracie Hills	400		55	3			456	3
	Harlowe	42	497		55			42	552
	Elizabeth	367	151					367	151
	Federly Park	3	269		90			3	379

(1)
Pro-57(2)
Perimeter(3)
Rural

TOTAL

	Black	White	Black	White	Black	White	Black	White
First Ward	805	0					805	
Hickory Grove					70	534	70	534
Hidden Valley				1059		32		1091
Highland	80	305					80	305
Hoskins			17	228			17	228
Huntersville					154	534	154	534
Hunt, Farms				419	7	168	7	587
Idlewild	53			52	2	501	55	593
Irwin Ave.	304	0					304	
Amey Jones			253		235	3	488	3
Lakeview	270	72	100	30			370	102
Lansdowne	72	754	3	1			75	795
Lincoln Heights	308		395				703	
Long Creek					270	468	270	468
Matthews					85	814	85	814
Merry Oaks		414		47				461
Midwood	21	487					21	467
Montclair				712				712
Myers Park Elem.	27	471					27	471
Nations Ford					47	685	47	685
Howell					74	447	74	447
Oakdale					69	504	69	504
Oakhurst	4	3	1	558			5	601
Oaklawn	620						620	
Olds Providence	76				4	459	80	459

	(1) Pre-57		(2) Perimeter		(3) Rural		TOTAL	
	Black	White	Black	White	Black	White	Black	White
Park Road	44	259		294			44	553
Pine Creek					27	595	27	595
Pine Creek Annex					30	266	30	266
Pineville					146	377	146	377
Pinewood				663				663
Pleza Road	6	258	83	104			89	362
Rena Road			1	393		410	1	803
Sedgefield Estate	3	557					3	557
S-Ivan	31	37		566		22	31	625
Shagrock Road		365		145				511
Sharon	86			92	3	245	89	337
Stairmont				687	25	21	25	708
Statesville Rd			113	49	220	463	333	512
Steale Creek					5	533	5	533
Thornstone				658				658
Tryon Hills	311		11	152		12	322	164
Tuckersongee					58	579	58	579
University Pk	716		116	1			832	1
Villa Heights	958	88					958	88
Westerly Hills			46	492		40	46	532
Wilmore	260	232					260	232
Windsor Park		318	1	429			1	747
Winterfield	48	120		572			48	692
TOTALS	5551	7577	1612	10,375	2925	12,855	14,187	30,817

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ITEM 3

AVERAGE DAILY NUMBER PUPILS RIDING SCHOOL BUSES

	Oct. 2 Oct. 29	Oct. 30 Nov. 26	Dec. 1 Jan. 7	Jan. 8 Feb. 11
HIGH SCHOOLS	1576	1293	1269	1193
JUNIOR HIGH SCHOOLS	881	887	835	829
ELEMENTARY SCHOOLS	10237	10150	10130	10201
TOTALS	23652	23290	23205	23126

AVERAGE DAILY PASSENGER MILES RIDE SCHOOL BUSES

CHARLOTTE-MECKLENBURG SENIOR HIGH SCHOOLS

		Oct. 2 Oct. 29	Oct. 30 Nov. 26	Dec. 1 Jan. 7	Jan. 8 Feb. 11		
	East Mecklenburg	621	587	584	585		
	Garinger	306	305	290	339		
	Harding	162	176	176	158		
	Independence	182	155	155	145		
	Myers Park	142	151	115	136		
	North Mecklenburg	827	633	683	747		
	Olympic	104	123	123	104		
	South Mecklenburg	950	505	505	825		
	West Charlotte	17	17	17	26		
	West Mecklenburg	633	550	550	505		
	Wevens				22		
	TOTALS	4574	4293	4269	4193		

AVIATION FIELD NUMBER FOR THE MONTHS OCTOBER 1943

CHARLOTTE-MECKLENBURG JUNIOR HIGH SCHOOLS

	Oct. 2 Oct. 29	Oct. 30 Nov. 26	Nov. 1 Jan. 7	Jan. 8 Feb. 2		
Alexander Road	71h	693	689	720		
Alexander	1037	1053	1053	1059		
Bartholomew	638	632	657	672		
Cashland	516	518	503	511		
Cashland	69	67	65	64		
Alexander Green	99	102	102	103		
Bartholomew	12	12	12	12		
Kennedy	135	135	135	129		
Ed Winston	654	655	655	655		
Bartholomew						
Pindone				15		
Cashland	1305	1203	1203	1211		
Randolph	151	554	103	303		
Winston	562	569	555	560		
Southfield	70	60	60	75		
Smith	673	673	673	679		
Smith	215	335	336	274		
Williams	77	76	76	69		
Wilson	944	879	879	947		
Edison (Carnell)						
Edison (Carnell)						
TOTALS	6041	6047	6006	6729		

ADVANCED EASY READER TOWNS READING SCHOOL TESTS

CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

	Oct. 2 Oct. 29	Oct. 30 Nov. 26	Dec. 1 Jan. 7	Jan. 8 Feb. 1			
Hamble Rd.	325	276	276	219			
Henderson	56	68	68	90			
Ashley Park	26	27	27	25			
Lein	621	607	607	609			
Carriager							
Barryhill	477	474	474	510			
Beasley Woods	303	305	305	298			
Ballinaville							
Charmwood	145	145	145	137			
Downs Ave.							
Chastille				12			
Clear Creek	221	215	215	105			
Collinswood	62	61	95	55			
Concordia	208	207	207	205			
Cornwall	10	39	39	38			
Edgemoor	15	61	61	61			
Marie Davis							
DeRita	353	353	353	372			
DeWolfe Jr.	93	93	99	95			
Bilwatha							
Dwight Oaks							
Edgemoor							
Edgemoor	20	20	20	20			
Edgemoor	21	24	24	25			
Edgemoor							

	Oct. 2 Oct. 29	Oct. 30 Nov. 26	Nov. 2 Dec. 7	Dec. 8 Feb. 21			
First Ward							
Hickory Grove	385	305	305	100			
Hidden Valley	61	61	61	61			
Highland							
Hoskins							
Huntersville	102-	399	399	104			
Hunt. Farms	83	85	86	70			
Idlewild	214	211	211	213			
Irvin Ave.							
Anna James	105	178	170	167			
Lakewood							
Lansdowne	234	227	227	221			
Lincoln Heights							
Lynn Creek	555	553	558	553			
Matthews	603	553	558	552			
Merry Oaks							
Midwood				L			
Montclair							
Nyers Park Elem.				16			
Nations Ford	567	554	554	552			
Nowell	304	129	109	103			
Oakdale	301	203	203	250			
Oakhurst	37	37	37	35			
Oaklawn							
Old Providence	183	103	103	167			

	Oct. 2	Oct. 2	Dec. 1	Jan. 6			
	Oct. 2	Nov. 2	Jan. 7	Feb. 1			
Fark Road	101	100	100	9h			
Few Creek	102	109	155	145			
Few Creek Annex	111	128	128	13h			
Pineville	119	149	150	13h			
Pineford							
Little Road	20	20	20	20			
Rock Road	112	11h	11h	136			
Sadiefield Flon.	6	6	6	5			
Solomon	102	105	105	99			
Shenock Road							
Sharon	155	155	155	1h3			
Stearns	10	33	33	23			
Stearnsville Rd.	658	659	659	770			
Stearns Creek	157	157	152	155			
Thompson							
Union Mills	71	71	71	71			
Tuckerman	293	25h	267	275			
University Rd.							
Village Heights							
Westerly Mills	62	62	62	67			
Wilmore				8			
Windsor Park							
Winterfield	12	10	10	10			
TOTALS	10237	10250	10250	1020h			

ITEM 4

With respect to the schools whose students are to be desegregated under the court ordered plan by rezoning:

	1-1/2 Miles Radius of School	2 Miles Radius of School
High Schools	2,067	3,583
Junior High Schools	5,921	9,074
Elementary Schools	9,671	11,559
TOTALS	17,659	24,222

ITEM 4

CHARLOTTE-NECKLENSBURG SENIOR HIGH SCHOOLS

	1 st Files		2 Files			
East Necklenburg	25		271			
Garinger	538		907			
Harding	364		562			
Independence	15		110			
Myers Park	392		759			
North Necklenburg	5		21			
Olympic	10		31			
South Necklenburg	5		134			
West Charlotte	693		754			
West Necklenburg	20		40			
TOTALS	2067		3569			

CHARLOTTE-HECKLEBURG JUNIOR HIGH SCHOOLS

	1 st Miles	2 Miles				
Altamare Road	104	184				
Alexander	10	48				
Cochran	556	771				
Coulwood	214	275				
Eastway	432	657				
Alexander Graham	384	556				
Hawthorne	408	611				
Kennerly	225	328				
McClinton	250	368				
Northwest	235	385				
Diagrams	310	530				
Quail Valley	6	103				
Randolph	448	878				
Ransom	86	150				
Sandefield	449	632				
Smith	646	775				
Spaugh	467	730				
Williams	334	367				
Wilson	132	221				
W-60 (Carpenter)	115	150				
W-61 (Carpenter)	109	150				
TOTALS	5521	5075				

CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

	1 st Miles	2 Miles					
Albemarle Rd.							
Allenbrook							
Ashley Park	379	521					
Bain							
Barringer	231	498					
Berryhill	137	231					
Beverly Woods							
Billingsville	179	230					
Briarwood							
Bruns Ave.							
Chantilly	475	475					
Clear Creek							
Collinswood	504	616					
Cornelius							
Cotswold	382	462					
Davidson							
Marie Davis							
Darlin							
Devonshire							
Dilworth	592	617					
Double Oaks							
Druid Hills							
Eastover	398	471					
Elizabeth	311	406					
Enderly Park	366	420					

	1 st Miles	2 nd Miles				
First Ward						
Hickory Grove						
Hidden Valley						
Highland	313	313				
Hoskins	363	363				
Huntersville						
Hunt. Farms						
Idlevild						
Irwin Ave.						
Isby Jones	127	128				
Leveque	419	419				
Lensdown						
Lincoln Heights						
Lena Creek						
Matthews						
Barry Oaks						
Midwood	513	517				
Montclair						
Myers Park Elem.	281	46½				
Nations Ford	25	28				
Regall						
Oakdale	266	37½				
Oakhurst	731	731				
Orlean						
Olds Residence						

	17 Miles	2 Miles				
Park Road						
Park Creek						
Park Creek Bridge						
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill	531	531				
Pine Hill						
Pine Hill	360	587				
Pine Hill						
Pine Hill	367	467				
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill	11	56				
Pine Hill	654	725				
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill	339	476				
Pine Hill	340	403				
Pine Hill						
Pine Hill						
Pine Hill						
Pine Hill	6571	11550				

1033a

State of North Carolina
Department of Motor Vehicles
Raleigh 27602

JOHN E. LOCKYER
J. E. PHELPS
ASST. COMMISSIONER

March 10, 1970

Mr. Floyd Bass
Citizens Safety Asso.
301 St. Bernard St.
Charlotte, N.C.

Dear Mr. Bass:

During 1969 there were some 1805 traffic deaths in North Carolina. There were 58610 reported personal injuries during that year.

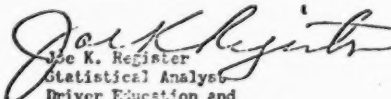
School age children are defined by me as those from 7 to 14 years old, inclusive.

There were some 136 of these children killed; 56 were pedestrians, 17 were bike riders, 4 were operating motor vehicles and the remaining 59 were vehicle passengers.

Approximately 4400 of the injured were in the defined age bracket; 560 were pedestrians, 475 were bike riders, 83 were operating a motor vehicle and the remainder were passengers.

During the 1968-1969 school year there were 330 school bus pupil passengers of all ages reported injured. One school bus pupil passenger was killed; six additional students were struck and killed by school buses; 21 were injured in a like manner.

Very truly yours,


Joe K. Register
Statistical Analyst
Driver Education and
Accident Records Division

JKR:aj



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The detailed analysis of accidents in this booklet was made possible by the cooperation of the following organizations and of many companies and individuals. Kind solicited and traffic authorities of cities and states, warehouse organizations, U. S. Bureau of the Census, National Center for Health, Education Bureau of Railroad Safety, Bureau of Public Roads, Federal Aviation Agency, National Transportation Safety Board, Bureau of Mines, Bureau of Labor Statistics, Canadian Bureau of Statistics, World Health Organization, insurance companies, trade associations, schools and community safety councils.

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1969 EDITION

CONGRESSIONAL ASSEMBLY, 1960

1035a

Accidental deaths and death rates of children 5-14 years
(See page 12 for effect of I.D.D. Death Decision on death totals)



	Deaths	Rate*
TOTAL	2,100	23.3
Motor-vehicle	1,200	10.2
Pedestrian	1,900	1.6
Home	1,100	3.1
Public non-motor-vehicle	2,600	6.3
Work	200	0.5

*Deaths per 100,000 population.

Totals by class of accident as shown above are not available for other age groups, but total deaths are shown below (1967 latest available). See also pages 8, 9 and 51.

Deaths and Death Rates by Age, 1967

Age Group	1967		Changes in Rates	
	Deaths	Rate*	1966-1967	1957-1967
1 to 4 years	8,074	37.1	- 4%	- 37%
5 to 9 years	4,010	19.0	- 8%	- 49%
10 to 14 years	3,561	18.6	+ 1%	- 41%
15 to 19 years	11,076	41.2	+ 8%	+ 24%
20 to 24 years	10,070	76.8	+ 7%	+ 43%

*Deaths per 100,000 population in each age group.

High school driver education

Participation in driver education has been increasing steadily since 1960, as shown in the table below. Eligible students are those enrolled in the grade level in which the most students are enrolled in driver education; eligible schools are the number of high schools that house these grade levels. The participation figures cover courses which consist of at least 30 clock hours of classroom instruction and 6 clock hours of laboratory instruction—in car or simulator.

Participation in Driver Education, 1960-1963

Year	Student Participation			School Participation		
	Eligible (1960)	Enrolled (1960)	% of Elig.	Eligible	Offering Course	% of Elig.
1967-68	2,007	814	40%	18,310	5,715	31%
1966-67	2,716	1,011	37%	18,115	5,017	28%
1965-66	3,747	1,407	38%	17,811	4,511	25%
1964-65	3,907	1,704	43%	18,115	4,111	23%
1963-64	3,971	1,372	34%	17,510	3,711	21%
1962-63	3,990	1,010	25%	17,111	3,111	18%
1961-62	3,000	1,111	37%	17,111	3,111	18%
1960-61	3,070	1,311	43%	17,111	3,111	18%

Source: Insurance Institute for Highway Safety.

PEDESTRIAN AND BICYCLE ACCIDENTS SUMMARY

1036

PRE-SCHOOL AND SCHOOL AGE CHILDREN

1969

Pre-School Children (Ages 0 through 5)

<u>Time</u>	<u>Total</u>	<u>Fatalities</u>	<u>Bicycle</u>	<u>Pedestrian</u>
8:00 a.m. - 4:00 p.m.	12	0	1	11
4:01 p.m. - 12:00 a.m.	20	0	1	19
12:01 a.m. - 7:59 a.m.	0	0	0	0
TOTAL	32	0	2	30

School Age Children (Ages 6 through 19)

<u>Time</u>	<u>Total</u>	<u>Fatalities</u>	<u>Bicycle</u>	<u>Pedestrian</u>
8:00 a.m. - 4:00 p.m.	70	4	23	43
4:01 p.m. - 12:00 a.m.	99	3	30	66
12:01 a.m. - 7:59 a.m.	4	0	0	4
TOTAL	173	7	53	113

The records showed City school enrollment increased 1.6% in 1969. Only one child was injured within the scope of our Safety Patrol and Crossing Guard program and only 19 other children were injured while in the process of going to or coming from school. This was 9.5% of the total amount of children injured in the City of Charlotte.

Education and supervision in bicycle and pedestrian safety rules has certainly been the key element for the decrease in this year's report. This yearly report shows that 123 accidents occurred after school hours. We realize, in order to eliminate the majority of these accidents, action must come from parents or supervisory personnel.

PLEASE BE A DEFENSIVE DRIVER WHERE YOU SEE CHILDREN; SLOW DOWN AND LET THEM LIVE

COMPARISON

	<u>1968</u>	<u>1969</u>
Enrollment	51,599	52,067
Parochial Enrollment	2,024	2,462

- 2 -

COMPARISON (contd.)

	<u>1968</u>	<u>1969</u>
Injured	220	205
Fatalities	8	7
Summer Accidents	58	49

PERCENTAGE OF CHANGES OVER PREVIOUS YEAR

Pre-school - decrease	30.2%
School ages - decrease	.05%
Bicycle - decrease	8.6%
Fatalities - decrease	12.6%

**Affidavit of Herman J. Hoose, Director of Traffic
Engineering for the City of Charlotte, North Carolina
(Referred to in Foregoing Submission)**

HERMAN J. HOOSE, being duly sworn, deposes and says that:

1. I am now, and have been for the past 22 years, Director of Traffic Engineering for the City of Charlotte. I am charged with primary responsibility for all matters relating to traffic on city streets and thoroughfares. By reason of my position, I also thoroughly familiar with matters relating to traffic in the portions of Mecklenburg County located outside the city limits. Various studies have been made under my direction and control regarding the vehicular traffic and related matters in both Charlotte and the balance of Mecklenburg County, North Carolina.

2. As of April, 1969, the total number of registered motor vehicles in Mecklenburg County, North Carolina, was 183,362, of which 160,862 were passenger vehicles and 22,500 were trucks. Based upon past experience, it is estimated that there has been a 5% increase during the one year interval since the foregoing figures were tabulated. Based upon this increase the total of such registered vehicles is now approximately 192,530, of which 168,905 are passenger vehicles and 23,625 are trucks.

3. In the summer of 1967, a survey was prepared (with the assistance of my Department) by the Planning and Research Department, North Carolina State Highway Department, Raleigh, North Carolina, entitled "External Origin & Destination Survey for Charlotte, N. C." The boundaries of the survey area covered by this study and

*Affidavit of Herman J. Hoose, Director of Traffic
Engineering for the City of Charlotte, North Carolina*

report are roughly (but not quite) the same as those of Mecklenburg County. It was the purpose of this survey to identify the total number of vehicles that daily enter and pass through the survey area (these trips being denominated as Class A trips) and the total number of vehicles that daily come from outside the survey area to a termination destination point within the survey area (these trips being denominated as Class B trips). The results of this survey (in the summer of 1967) are as follows:

Class A Trips (i.e., through traffic)	13,285
---------------------------------------	--------

Class B Trips (i.e., to and from points of origin outside the survey area)	55,580
---	--------

Based on past experience, each of these trip categories increases about 5% per year—resulting in about a 10% increase since the 1967 survey was made. With this increase, the current Class A Trips are about 14,613 and Class B Trips about 61,138. The Class B trips are predominately those by persons who live outside Mecklenburg County and have jobs in Charlotte and Mecklenburg County. Most of these Class B trips are during the morning (7:30 to 9:30 a.m.) and evening (4:30 to 6:30 p.m.) rush hours when local traffic is at its peak. The Class A trips are primarily those of the traveling public passing through Charlotte and Mecklenburg County. A major portion of these Class A trips are also made in the morning and evening rush hours, resulting primarily from the fact that travelers make a local stopover at local hotels and motels in the evening and continue on their way the next morning.

*Affidavit of Herman J. Hoose, Director of Traffic
Engineering for the City of Charlotte, North Carolina*

4. With reference to strictly internal traffic (i.e., making trips to and from points entirely within Mecklenburg County) studies made by my Department show that as of November 1969 there were approximately 102,000 occupied dwelling units in Mecklenburg County, that each dwelling units owns 1.55 passenger automobiles and makes 7.4 trips per day or 4.7 trips per vehicle per day. This means that the locally registered passenger cars (currently estimated to be 168,905) makes about 793,853 internal trips per day (i.e. 168,905 cars x 4.7 trips per car).

5. A summary of the currently estimated number of trips per day in Charlotte and Mecklenburg County is as follows:

Class A Trips (see Para. 2 above)	14,613
Class B Trips (see Para. 2 above)	61,138
Internal Trips by Autos (see Para. 4 above)	793,853
Total (exclusive of internal truck trips)	869,604

HERMAN J. HOOSE

**Submissions to Court in Response to
March 6, 1970 Order
(Filed March 6, 1970)**

In compliance with the March 6, 1970 Order of this Court the Defendant Charlotte-Mecklenburg Board of Education submitted all of the information and maps required by that Order with the exception of the data and information identified in Paragraph 2 thereof. The data and information specified in that Paragraph 2 (and related matters), as interpreted by the Defendants, is now submitted herewith together with an affidavit of William C. Self, Superintendent of Charlotte-Mecklenburg Public Schools.

Respectfully submitted this 17 day of March, 1970.

/s/ WILLIAM J. WAGGONER
William J. Waggoner

/s/ BENJ. S. HORACK
Benj. S. Horack

Attorneys for Defendants

**Affidavit of William C. Self, Superintendent of
Charlotte-Mecklenburg Public Schools**

(Referred to in Foregoing Submission)

WILLIAM C. SELF, being duly sworn, deposes and says that:

1. I am the Superintendent of the Charlotte-Mecklenburg Public Schools.

2. On Monday a. m., March 9, 1970, I received a copy of the Order of the District Court dated March 6, 1970, in which the School Board was directed to furnish the data, information and maps described in the 8 paragraphs of that Order. Immediately upon receipt of that Order I, together with members of my administrative staff and other school personnel, began to assemble the requested information and data and to prepare the maps. In an effort to meet the prescribed March 13, 1970 deadline, the administrative staff and other personnel worked both day and night.

3. On March 13, 1970, all of the information, data and maps requested by the March 6, 1970, Order were filed with the District Court with the exception of the information designated as Item 2 in that Order. When the submission of the other items were made the Court was advised that additional time was necessary to assemble the facts and figures required by that Paragraph 2.

4. The staff was advised by the School Board attorneys that the information requested by that Paragraph 2 related to the numbers of children in each school in the entire system who under the Court approved Plan will live in a different zone from that of the school they attended in

*Affidavit of William C. Self, Superintendent of
Charlotte-Mecklenburg Public Schools*

January 1970. After many hours of preparing the data on that phase and checking and double checking its accuracy in conformity with what the staff understood Paragraph 2 to require, the information has now been completed and is being submitted to the District Court.

5. During the morning of March 17, 1970, I was advised through our attorneys that the Court had stated that Paragraph 2 of his March 6, 1970, Order has been misinterpreted and that the Court now advises that Paragraph 2 was not intended to relate to the zones under the Court approved Plan, but on the contrary made inquiry of the numbers of children in each school who now live in a different zone from that of the school they attended in January 1970—with a designation of those who are supplied transportation and those who are not supplied transportation.

6. Immediately upon receipt of this advice, I made inquiry to ascertain whether this information was available, from whom it would need to be acquired and what would be involved in preparing a tabulation. I am advised that this information and data can be supplied only by utilizing computer print outs and a manual analysis of them and by the principals of the different schools who will first have to make an analysis of their school records and a head count of those who are and are not afforded transportation.

7. Both the administrative staff and the school principals have been and are now involved in the laborious task of conforming grid lines to suitable natural monuments as one of the major undertakings required in order to be in readiness to implement the Court Plan at the elementary level by the prescribed April 1, 1970 deadline.

*Affidavit of William C. Self, Superintendent of
Charlotte-Mecklenburg Public Schools*

8. Because of the heavy involvement of the staff, the principals and other school personnel in the efforts to implement the Court Plan, superimposed upon the time consuming task of assembling the other information requested by the March 6, 1970, Order, I respectfully state that it is not humanly or physically possible to assemble and furnish the Paragraph 2 information in time to meet the Court prescribed deadline. In view of the foregoing, we respectfully request the Court's guidance as to what it wants us to do in view of this dilemma.

WILLIAM C. SELF

**Affidavits of J. D. Morgan, Ralph Neill
and J. W. Harrison**

(Referred to in Foregoing Submission)

Each of the undersigned being duly sworn deposes and says that:

1. His position with the Charlotte-Mecklenburg School System is as indicated below.

2. From March 9, 1970 to March 17, 1970 a total of not less than 650 man hours were expended by school personnel in obtaining and tabulating the information and preparing the maps requested in the March 6, 1970 order of the District Court. These persons include the following:

J. D. Morgan—Assistant Superintendent—Business Services;

Ralph Neill—Adm. Assistant—Auxiliary Services;

John Hansil—Adm. Assistant Physical Plant;

J. W. Harrison—Director of Transportation;

Carroll York—Director of Planning and Sites Development;

H. L. Puckett—Director of School Construction;

Julian Carter—Site Engineer;

Ron Reavis—Draftsman;

Wayne Church—Director of Research;

Don Baucom—Assistant Director of Transportation;

Bill Harrison—Transport Spec.

*Affidavits of J. D. Morgan, Ralph Neill
and J. W. Harrison*

3. He is thoroughly familiar with those information and maps which have been submitted to the court pursuant to the order including item arabic 2 and its attachments and states that they correctly portray information which they purport to convey. Any estimates and projections being based on the actual past experience of the Charlotte-Mecklenburg School System.

North Carolina
Mecklenburg County

This 17th day of March, 1970 came before me the following and who being duly sworn acknowledged the afore as true statements:

/s/ J. D. MORGAN
J. D. Morgan

/s/ RALPH E. NEILL
Ralph E. Neill

/s/ J. W. HARRISON
J. W. Harrison

WITNESS my hand and Notarial Seal.

/s/ RUTH VON CANON
Notary Public

My commission expires: April 24, 1970

ITEM 2

Summary of total number of children in each school in the entire system who will live in a different zone under the court approved plan from that they attended in January of 1970.

	<u>Live in Rezoned Area</u>	<u>Now Trans- ported</u>	<u>Add'l to Trans- port (1)</u>	<u>Not to be Trans- ported</u>
Senior High Schools	5,292	3,008	2,197	87
Junior High Schools	6,696	4,522	1,599	575
Elementary Schools	<u>6,472</u>	<u>1,486</u>	<u>2,223</u>	<u>2,763</u>
GRAND TOTAL	18,460	9,016	(2) 6,019	3,425

NOTE: (1) Additional transportation provided under Court Plan for each child who lives more than 1-1/2 miles from his school and who has been rezoned (rezoned) to a different school than the one previously attended.

(2) A substantial number of these children will be transported a greater distance under the Court Plan than is presently the case.

1048a

Item 2

NUMBER OF CHILDREN WHO WILL LIVE IN A DIFFERENT
ZONE FROM THAT THEY ATTENDED IN JAN. 1970

THE CHARLOTTE-MECKLENBURG
SENIOR HIGH SCHOOLS

1969 - 1970

	Live in Rezoned Area	Now Trans- ported	Additional to Trans- port	Not to be Trans- ported
East Mecklenburg	469	4	465	0
Garinger	836	365	471	0
Harding	258	188	45	25
Independence	211	211	0	0
Hyers Park	411	96	308	7
North Mecklenburg	47	47	0	0
Olympic	659	643	16	0
South Mecklenburg	561	149	412	0
West Charlotte	1409	1135	219	55
West Mecklenburg	431	170	261	0
	5297	3008	2197	87

Item 2

NUMBER OF CHILDREN WHO WILL LIVE IN A DIFFERENT
ZONE FROM THAT THEY ATTENDED IN JULY, 1970

CHARLOTTE-MECKLENBURG JUNIOR HIGH SCHOOLS

	Live in Religious Area	Zone Trans- ported	Additional to Trans- port	Not to be Trans- ported
Alexander Area	220	155	0	24
Alpharetta	49	49	0	0
Asheboro	159	68	91	0
Asheville	212	75	137	0
Asheville	150	140	0	18
Asheville/Town	50	16	30	4
Asheville	205	39	135	31
Asheville	576	452	58	51
Asheville	76	50	26	0
Asheville	793	667	97	6
Asheville	516	0	473	43
Asheville	201	201	0	0
Asheville	275	243	12	20
Asheville	305	315	0	0
Asheville	317	29	245	43
Asheville	183	141	42	0
Asheville	391	138	253	0
Asheville	879	867	0	12
Asheville	148	148	0	0
Asheville (Special)	368	135	0	233
Asheville (Special)	524	434	0	50

1050a

Item 2

NUMBER OF CHILDREN WHO WILL LIVE IN A DIFFERENT
ZONE FROM THAT THEY ATTENDED IN JAN. 1970

CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

	Live in Zoned Area	How Trans- ported	Additional to Trans- port	Not in Trans- ported
Albemarle Rd.	0	0	0	0
Allenbrook	63	0	33	30
Ashley Park	274	0	221	53
Bain	0	0	0	0
Barringer	288	35	205	48
Berry Hill	467	193	274	0
Beverly Woods	0	0	0	0
Billingsville	272	112	128	32
Briarwood	0	0	0	0
Bruce Ave.	0	0	0	0
Chantilly	0	0	0	0
Clear Creek	0	0	0	0
Collinswood	253	0	274	29
Cornelius	0	0	0	0
Cottage	269	63	0	206
Davidson	0	0	0	0
Deer Creek	8	0	0	8
Durham	0	0	0	0
Edgewood	0	0	0	0
Ellenwood	52	0	0	52
Embley Park	0	0	0	0
Forest Hills	0	0	0	0
Forest Hill	351	7	42	302

	Live in Zoned Area	Ex- cluded Tract Portion	Additional to Tract Portion	Ex- cluded Tract Portion
First ward	0	0	0	0
Hickory Grove	0	0	0	0
Hidden Valley	0	0	0	0
Highland	7	0	0	7
Hoskins	293	0	0	293
Huntersville	0	0	0	0
Hunt. Farms	0	0	0	0
Idlevold	0	0	0	0
Irwin Ave.	0	0	0	0
May James	105	105	0	0
Lekeview	231	0	0	231
Lensdowne	0	0	0	0
Lincoln Hahs.	0	0	0	0
Long Creek	0	0	0	0
Matthews	0	0	0	0
Merry Oaks	0	0	0	0
Midwood	83	0	0	83
Montclair	0	0	0	0
Myers Park Elen.	235	0	103	76
Nations Ford	279	28	201	0
Nowell	22	22	0	0
Oakdale	105	105	0	0
Oakhurst	118	0	0	118
Oaklawn	0	0	0	0
Olde Providence	0	0	0	0

	Live in Rezoned Area	Now trans- ported	Additional to trans- port	Not to be trans- ported
Park Road	0	0	0	0
Paw Creek	0	0	0	0
Paw Creek Annex	0	0	0	0
Pineville	0	0	0	0
Pinewood	375	375	0	0
Plaza Road	249	0	0	249
Rena Road	0	0	0	0
Redfield Elem.	259	0	164	95
Selwyn	0	0	0	0
Shawnee Elem.	302	39	45	218
Sharon	0	0	0	0
Stearns	0	0	0	0
Stearnsville Hl.	0	0	0	0
Steele Creek	295	176	119	0
Thornstorn	213	0	94	119
Tryon Hills	0	0	0	0
Tuckersboro	0	0	0	0
University Hl.	0	0	0	0
Villa Heights	0	0	0	0
Wesley's Hills	200	0	140	60
Willmore	149	0	71	78
Windsor Park	0	0	0	0
Winterfield	0	0	0	0
	6477	1485	2223	2763

* Does not include pupils now transported from inner-city closed schools 7-1-69.

TOTAL NUMBER OF STUDENTS FOR WHICH ADDITIONAL
TRANSFORMATION IS REQUIRED BY THE COMB. GRADE PLAN

CHARLOTTE - RICHMOND SCHOOLS

SCHOOLS	NO. STUDENTS PAIRED SCHOOLS	NO. STUDENTS SEPARATE SCHOOLS	NO. STUDENTS REMOVED FROM	TOTAL NO. STUDENTS IN TRANSITION
senior		300	2,197	2,497
junior		2,760	1,599	4,359
elementary	10,206		2,223	12,429
TOTAL	10,206	3,060	6,019	19,285

1054a

TOTAL NUMBER OF STUDENTS FOR WHICH FISCAL YEAR TRANSFORMATION IS
RECEIVED BY THE COLLEGE OWNED PLAN

CHARLOTTE-MECKLENBURG SENIOR HIGH SCHOOLS

	Sex	Age	Grades	Total			
East Mecklenburg			465	465			
Garfield			471	471			
Harding			45	45			
2,400 255-Club Independence 318 A	300	0	300				
Myers Park			306	306			
North Mecklenburg			0	0			
Olympic			16	16			
South Mecklenburg			412	412			
West Charlotte			219	219			
West Mecklenburg			261	261			
TOTAL	300	2,197	2,497				

1066a

CHALCOTT - CONCORDIA JUNE 1947

	Solo- life	Reserve	Total			
Alexander, Jess	297		297			
Alexander						
Carbena	303	91	394			
Caulmont		137	137			
Castro	354		354			
Alexander, George	374	30	404			
Hawthorne		135	135			
Kennedy		58	58			
McClintock	355	26	381			
Northcutt		97	97			
Pindone		473	473			
Quail Hollow	274		274			
Randolph		12	12			
Ranson						
Sed. Field		245	245			
Smith	402	42	444			
Straub		253	253			
Williams						
Wilson	163		163			
F-100 (Garrett)	218		218			
F-101 (Gunn)						
	2,750	1,500	4,250			

TRANSPORTATION IS PROVIDED BY THE COLLEGE DISTRICT

CHARLOTTE-MECKLENBURG ELEMENTARY SCHOOLS

1086a

	PAID	RECEIVED	TOTAL				
Albemarle St.	175		175				
Allenbrook	155	33	122				
Ashley Park		221	221				
Bain							
Barringer		205	205				
Berryhill		274	274				
Beverly Woods	250		250				
Billingsville		126	128				
Briarwood	222		222				
Burns Ave.	526		526				
Chenille							
Clear Creek							
Collinswood		224	224				
Coppellus							
Cotswold							
Craigdon							
Pacific Drive	490		490				
Deer Run							
Deerfield	276		276				
Dilworth							
Devon Oaks	587		587				
Druid Hills	312		312				
Eastover		42	42				
Elizabeth		30	30				
Emery Park		79	79				

	PAID	RECEIVED	TOTAL				
First Ward	573		533				
Hickory Grove	224		224				
Hidden Valley	302		302				
Highland							
Hoskins							
Huntersville							
Hunt. Farms	195		195				
Idlewild	163		163				
Irwin Ave.							
May James							
Lakeview							
Lansdowne	237		237				
Lincoln Hants.	455		455				
Long Creek							
Matthews							
Perry Oaks	112		112				
Ridgewood							
Roseclaire	217		217				
Rivers Park Elem.		153	153				
Nations Ford		201	201				
Howell							
Oakdale							
Onchutst	105		105				
Oaklawn	405		405				
Old Providence	147		147				

	PAID	RECEIVED	TOTAL			
Farm Road	100		100			
Pan Creek	225		225			
Pan Creek Annex	56		56			
Pine Hill						
Piquette	346		346			
Flare Road						
Race Road	244		244			
Sedgfield Elm.		104	104			
Selwyn	108		108			
Shannon Gals.	90	45	135			
Sharon	117		117			
Stearns	234		234			
Stevensville Rd.						
Steele Creek		119	119			
Thornston	95	94	189			
Tracy Hills	325		325			
Tuscarawas	150		150			
University Pk.	550		550			
Villa Heights	727		727			
Westerly Hills		140	140			
Wilcox		71	71			
Windsor Park	234		234			
Windsorfield	199		199			
	10,204	2,227	12,431			

1059a

COUNT CHILDREN 11 MI
CHARLOTTE-MECKLENBURG SCHOOLS

1. Cost Taxes *	\$ 2,369,064.08
2. Cost of Parking Areas *	264,600.00
3. Cost Operation **	566,613.76
4. Personnel **	166,190.00
5. Total Cost First Year	\$ 3,806,667.84

NOTES:

* These Capital Outlay items do not reflect annual depreciation.

** These items are costs which recur each year. These figures do not take into account anticipated annual cost increases.

1060a

COURT ORDERED PLAN
COSTS FOR REMAINDER 1969-70 YEAR

	COST OPERATION	PERSONNEL	TOTAL
Elementary Schools - 49 days	\$101,230.02	\$ 28,347.48	\$129,577.50
Junior and Senior High Schools 26 Days	<u>30,551.00</u>	<u>8,800.00</u>	<u>39,351.00</u>
TOTALS	\$131,781.12	\$ 37,147.48	\$168,928.60

1061a

COUNTY OF ALBERTA

COMMUNITY DEVELOPMENT DEPARTMENT

SUBJECT: PROJECT 1061a

1. Capital Outlay

A. 60 Hours @ \$5,367.69 Ea.	\$ 371,747.16
B. Equipment	1,750.00
C. Service Vehicles	
Service Trucks - 3	7,500.00
Gasoline Delivery Truck - 1	5,000.00

2. Cost Operation

	Daily	Annual
Driver's Salaries	\$353.97	\$ 49,058.57
Gasoline, oil, grease, anti-freeze	69.17	11,619.77
Maintenance Salaries	69.61	16,110.61
Repair Parts	16.55	2,997.35
Tires and Tubes	-	-
TOTALS	\$529.92	\$ 55,915.52

3. Personnel

A. Supervisory - 1	\$ 8,190.00
B. Clerical - 1	6,120.00

1062a

COURT ORDER PLAN
CHARLOTTE-MECKLENBURG SCHOOLS
JUNIOR HIGH SCHOOLS

1. Capital Outlay

A. 24 Buses @ \$5,307.64 ea.	\$452,551.
B. Equipment	2,250.
C. Service Vehicles	
Service Trucks - 4	10,000.
Gasoline Trucks - 2	10,000.

2. Cost Operation

	Daily	Annual
Drivers' Salaries	\$430.92	\$ 77,995.
Gasoline, oil, grease, anti-freeze	78.12	14,339.
Mechanics' Salaries	100.36	19,613.
Repair Parts	20.16	3,648.
Tires and Tubes	-	-
TOTALS	<u>\$665.12</u>	<u>\$116,765.</u>

3. Personnel

A. Supervisory - 3	\$ 24,570.
B. Clerical - 1	6,120.
C. Bus Dispatcher - 1	7,600.

10634

COUNTY COUNCIL NO. 14

CHRYSLER DODGE RAMS SCHEDULE

ELEMENTARY

1. Capital Outlay

A. 269 Buses @ \$5,367.64 ea.	\$1,449,275.16
B. Equipment	6,500.00
C. Service Vehicles	
Service Trucks - 11	27,500.00
Gasoline Delivery Trucks - 5	25,000.00

2. Cost Operation

	Daily	Annual
Drivers' Salaries	\$1,379.97	\$249,774.57
Gasoline, oil, grease, anti-freeze	250.17	45,200.77
Mechanics' Salaries	347.01	62,800.61
Repair Parts	64.56	11,665.36
Tires and Tubes	-	-
TOTALS	\$2,055.92	\$373,931.52

3. Personnel

A. Supervisory - 5	\$ 40,950.00
B. Clerical - 3	18,360.00
C. Bus Dispatcher - 1	7,800.00
Assistant Bus Dispatcher - 1	5,200.00
D. Mechanical Supervisory - 2	16,640.00
E. Personnel Manager - 1	8,320.00
F. Driver Training Supervisor - 1	7,800.00
G. Bus Route Specialist - 1	8,320.00

1064a

COURT ORDER PLAN
ADDITIONAL TRANSPORTATION REQUIRED

CHARLOTTE-HECKLENBURG BOARD OF EDUCATION
SENIOR HIGH SCHOOLS

SCHOOL	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING AREA	BUS AREA
East Mecklenburg	465	11	S	-
Garinger	471	11	N	7
Harding	45	1	S	-
Independence	300	7	S	-
Myers Park	308	7	N	5
North Mecklenburg			S	-
Olympic	16	1	S	-
Second Ward				
South Mecklenburg	412	10	U	6
West Charlotte	219	5	U	4
WestMecklenburg	261	6	U	5
Changes in Attend. Areas		10		
	2,497	69		28

1065a

COUNT ORDER PLAN

ADDITIONAL FUNDING ACTION REQUIRED

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION
JUNIOR HIGH SCHOOLS

SCHOOL	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING AREA	BUS PARKING AREA COST
Beaumont	297	6	S	-
Beaumont	0		S	
Beaumont	394	7	U	5,400
Beaumont				
Beaumont	137	3	S	
Beaumont	354	7	U	5,400
Beaumont	404	7	N	5,400
Beaumont	335	3	N	3,800
Beaumont				
Beaumont	381	7	U	5,400
Beaumont	97	2	N	3,400
Beaumont	473	9	N	6,200
Beaumont	274	5	U	4,600
Beaumont	0	0		
Beaumont	245	5	N	4,600
Beaumont	444	8	S	-
Beaumont	253	5	N	4,600
Beaumont	0	0		-
Beaumont	183	4	U	4,200
Beaumont	58	1	N	3,000
Beaumont				
Beaumont	12	1	S	
Beaumont	218	4	S	
Beaumont	0			
Beaumont	4,350	84		56,000

P-600 (Carroll)
P-601 (Cowan)

1086a

ADDITIONAL TRANSPORTATION REQUIRED

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

ELEMENTARY SERVICES

SCHOOL	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING AREA	BUS AMOUNT
Albemarle Road	176	4	L	4700
Allenbrook	189	4	S	
Ashley Park	221	4	N	4700
Bain				
Barringer	205	4	N	4700
Berryhill	274	5	S	
Beverly Woods	250	5	S	
Billingsville	128	3	N	3800
Briarwood	222	5	U	4600
Bruns Avenue	526	12	N	7400
Chantilly				
Clear Creek				
Collinswood	224	4	S	
Coxsack Marie Davis	490	9	N	6700
Cotswold				
Davidson				
Derita				
Devonshire	276	6	S	
Dilworth				
Double Oaks	587	12	N	7400
Druid Hills	312	6	N	5000
Eastover	42	1	N	3900
Elizabeth	30	1	N	3000
Enderly Park	79	2	N	3400
First Ward	533	12	N	7400
Hickory Grove	224	4		4700

1087a

ALTERNATE TRANSPORTATION REQUIRED

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

ELEMENTARY SCHOOLS

	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING AREA	BUS PARKING AREA COST
Flex	302	6	N	5000
Flex	195	4	N	4200
	163	3	U	3800
	292	6	N	5000
	456	9	N	6200
	119	2	N	3400
	217	4	N	4200
	153	3	N	3800
	201	4	S	
	105	2	N	3400
	405	9	N	6200
	147	3	U	3800
	160	3	N	3800
	225	4	U	4200
Flex (Crew's Branch)	56	1	S	

ADDITIONAL TRANSPORTATION REQUIRED

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION
ELEMENTARY SCHOOLS

SCHOOL	NO. STUDENTS TO BE TRANSPORTED	NO. BUSES REQUIRED	BUS PARKING AREA	BUS P AREA
Rara Road	244	5	N	460
Sedgefield Elem.	164	3	N	380
Selwyn	188	4	N	420
Shamrock Gardens	135	3	N	300
Sharon	117	2	N	340
Starcount	234	5	N	460
Statesville Road				
Steele Creek	119	2	N	
Thomasboro	18	4	N	42
Tryon Hills	328	6	N	50
Tuckersboro	190	4	N	42
University Park	550	12	N	74
Villa Heights	797	15	N	80
Westerly Hills	140	3	N	38
Wilmore	71	2	N	30
Windsor Park	234	5	N	40
Winterfield	199	4	N	42
Pinewood				
Change in Attendance Area		17		
	12,429	269		200

Deposition of J. D. Morgan March 19, 1970

[1] This deposition was taken on March 19, 1970, at 10:15 A.M., in the Map Room of the Charlotte-Mecklenburg Education Building, Charlotte, North Carolina.

By consent all objections except as to the form of the question are waived and objections will be made and ruled on at the time of trial. With the consent of counsel, signature is waived.

APPEARANCES:

Plaintiffs—Julius L. Chambers, Esq.

**Attorney at Law
Charlotte, North Carolina**

**Adam Stein, Esq.
Attorney at Law
Charlotte, North Carolina**

Defendants—Benjamin S. Horack, Esq.

**Attorney at Law
Charlotte, North Carolina**

J. D. MORGAN, having first been duly sworn, was examined and testified as follows:

By Mr. Chambers:

Q. Mr. Morgan, we have an affidavit that you submitted to the Court on yesterday or the day before, listing your estimates of the number of students who live in the areas affected by the February 5th order and who would be provided transportation. We'd like to examine these figures. Do you have a copy of the figures?

Deposition of J. D. Morgan March 19, 1970

[2] Mr. Horack: That's which pages?

Mr. Chambers: Beginning with item 2.

A. This is it right here, item 2, summary of total number of children in school in the entire system who live in different zones under the Court approved plan.

Q. Yes. **A.** Yes.

Q. I think according to your figures you have estimated you'd have 18,460 who would live in the rezoned area and of that 9,016 are now being transported and you estimate an additional 6,019 would have to be transported. **A.** That's correct.

Q. And you say that 3,425 would not need to be transported. **A.** That's correct.

Q. We'd like to see how you arrive at these figures. Do you have a map that you used in preparing these figures?

A. Yes, and I believe, Mr. Chambers, the only way I am going to be able to do that will be to take the maps and go through it as we have listed here in item #2 school by school, grid by grid for all of them to show you.

Q. All right, would you do that for us? **A.** It will take us probably, I'd say, a couple hundred hours to do it. It took me over three hundred but now that I am this familiar with it we might be able to do it.

Q. Do you have your map? **[3] A.** Yes.

Q. With your grids and your estimates of students in those grids? **A.** These are the maps here. This is the senior high school map, here is the junior high school map here, and this is the elementary schools.

Q. Where is your demographic map showing the number of pupils in each grid? **A.** I submitted all three copies of those I had colored in color to the Court. However, these

Deposition of J. D. Morgan March 19, 1970

are the three maps that we worked from because they are a larger scale.

Q. But those maps don't show the number of pupils in each grid. A. I'll have to get my printout where I took them, apply my templet that we used that I demonstrated to you before and apply that on each school and then take the grids that we used and then get the number of children off of the computer printout on that.

Q. Would you mind letting me see the computer printout, whatever it is you used? A. Yes. If you will excuse me a minute. We returned it to Dr. Church. (The witness leaves the hearing room.) (He returns.) These are the printouts right here. This was done in January of this year. So it was from these the elementary, the junior high and senior high that I worked from.

Q. Now, what do those printouts show? A. It shows the number of children grade by grade, grid by grid.

[4] Q. All right. Now, let's take East Mecklenburg High School. Can you find that on the printout? A. Uh huh. Here is East Mecklenburg.

Q. Now, according to the estimates that were made by your staff under the Court directed plan, East Mecklenburg would have 2147 students. A. All right.

Q. I'd like to know what your printouts show with respect to the number of students who would be assigned to East Mecklenburg, the total number. A. The total number presented to the Court shows 2100.

Q. Well, under this exhibit which was in the Finger plan, which is what I understand you operated under, you have a total of 2147 students assigned to East Mecklenburg. Now, will your printout show the total number of students who will be assigned to East Mecklenburg? A. Mr. Cham-

Deposition of J. D. Morgan March 19, 1970

bers, what I'll have to do to get that will be to take all the grids in East Mecklenburg off of my map there, come over here with the same number here and add all those grids together. I'll have to go to a map and pull off grid by grid all in the East Mecklenburg area and come back to this map here, this printout here, and take all the grids or any portion of those grids and apply that right back down to this right here and that should total, when we add them all up—this was taken from there and therefore it should add to [5] that number of children.

Q. Let's look at something smaller. We would like to add those printouts as exhibits, but let's look at a small elementary school and see how you got your numbers. Would you look at the printout for Villa Heights? A. All right. You didn't pick the easiest one.

Q. While you're doing that, why is part of the Villa Heights zone colored and part not colored? A. This indicated that the Villa Heights school was paired with certain other schools. That indicates the pairing. Another example would be Lincoln Heights is colored this color here because it's paired with Merry Oaks, with Albemarle, with Idlewild. So this map indicates the pairing.

Q. Why isn't all of the Villa Heights school zone colored blue? A. Well, this was the map that we started on originally to prepare for the Court and the attorneys felt this was too big and too cumbersome to be handled and managed effectively and could we reduce this down in scale to the size of a map that we sent in. So we ran a reprint of this map, reducing it in half, and when we started that we just stopped the fellows wherever they were in completing this map to go to work on the other maps and not spend any more time on this. The fellows were instructed and that's the only reason I can explain to you.

Deposition of J. D. Morgan March 19, 1970

Q. Let me ask you a question. Grids 209C, D and 300B, this [6] portion above this line colored blue, are these part of the Villa Heights district? A. Yes. This is the Villa Heights area. Under the new rezoned plan it would run up here like this and I've got a question mark as to why this line was run in. I have to go back and check some figures to see why that line was placed in here.

Q. You're saying that grids 298D and C are not part of the Highland district? A. Under the . . .

Q. Court order plan. A. No.

Q. All right. A. Because it shows Highland . . . all right, that's sufficient. You realize you're asking me to do something here that was done by someone else that submitted this.

Q. That submitted the attachments to the Finger plan? A. As far as calculating the total number of children in the area that was submitted to the Court previously, I did not work on that at all. But you're asking me to go back and get something that I've got to go back and pull out someone else's work here.

Q. You submitted the affidavit talking about the number of pupils who would be . . . A. I'm talking about the number of students in the rezoned area now. You asked me the total number of children submitted on [7] that and I only worked on the areas that had been rezoned.

Q. You have as an attachment in this affidavit the number of pupils who would be provided transportation under the Court directed plan, not only dealing with the rezoned areas but also with the paired schools. A. In the Villa Heights area, rezoning does not apply to Villa Heights. Villa Heights is paired and therefore all the children in grades 1 through 4 at Villa Heights would be transported to the schools that they have been paired with.

Deposition of J. D. Morgan March 19, 1970

Q. How did you determine the number of students who are in grades 1 through 4 in the Villa Heights school? A. I took the number of children . . . let me get that, I have that figure down in my office. If you'll excuse me to get that. (The witness leaves the hearing room and returns.) All right, Mr. Chambers, so you'll understand Villa Heights, if you will look at this document. Total number of students for which additional transportation is required by the Court ordered plan, and turn to the last sheet on that section. It's the last page of this document starting right here.

Q. I have that. A. All right. Now, if you will look at Villa Heights you will see that I have said paired 797, a total of 797. All right, that came from information that was submitted to the Court taken from the computer printout which I have right here showing the total.

[8] Q. Wait a minute. Which exhibit are you referring to? Is that the attachment to the Finger plan? A. Mr. Chambers, I don't know which. That's the same you're using there?

Q. That's right. A. I thought it was, that looked like it.

Q. Yes. A. All right, flip back now to the sheet prior to that one.

Mr. Horack: Is there some way that we can identify?

Mr. Chambers: We will identify it as Plaintiffs' Morgan March 19th deposition Exhibit A, the Finger plan.

A. That is the same figure I worked from there, adding those up that is paired and that gives you the 797 that will be transported to the schools with whom they are paired.

Deposition of J. D. Morgan March 19, 1970

Q. What you are saying, then, is that you didn't really go and count the grids in Villa Heights. A. No. It was done on that submitted to the Court.

Q. You just took the numbers that were shown in the Finger plan, which is now identified as Morgan March 19 Deposition Exhibit A. A. For the paired schools, yes.

Q. For all of the paired schools you just took the number of students from Plaintiffs' Exhibit A. [9] A. That's correct for all paired schools. Mr. Chambers, let me clear up one thing. I took all of that but if you will look at this sheet here, however, I was told that it was submitted in here that this would also take place right here. So that your figures—if you want to add up figures and double-check me on it—you can find that assigned from areas to increase desegregation at Oakhurst, Shamrock Gardens and Thomasboro. Now, this was assigned from this so when I was doing my computation to figure the total number, I took the total number of grades 1 through 4 and came up with 4,984. Of grades 5 and 6 to be cross-bused back to those schools, I took a total of 4,932. To that figure the ones from Oakhurst, Shamrock Gardens and Thomasboro on there that were assigned to increase integration in those schools. That gave the 10,206 which I have on my sheet.

Q. The assignments to Oakhurst and Shamrock Gardens and Thomasboro would not be cross-busing. As I read it, this is just some black students assigned from inner-city to these schools. A. Well, you could refer to that as a satellite.

Q. This isn't cross-busing, is it? A. For those three schools, no. It would be a satellite. For my purpose of figuring I had to put those 209 to get the total number of children. I counted the satellite the same as a paired school.

Deposition of J. D. Morgan March 19, 1970

[10] Q. So you came up with a total of 10,206. Is that the rezoning and the pairing? A. No, that's just the paired. In the summary you'll see here I gave the total number of elementary as 10,206 in the paired school. And in the rezoned schools I could have counted those 209 in this area here but I just kept all the elementary together there.

Q. You're talking about you could have put the black kids being bused to Shamrock Gardens and the other two in the satellite schools? A. Yes, the 209 could be placed there. The important thing to me was that it was 10,206 that would be transported one way or another. Then we come to the rezoned area and we broke the rezoned area into the 2,223, giving a total number of elementary children to be transported 12,429.

Q. All right. So that's how you say you arrived at the figure for the paired schools, by taking the number that is attached or shown in the Finger proposal. Show us how you arrived at the number of students in the zoned schools. Myers Park is an example. Let's look at Myers Park elementary.

(Off the record by consent at this time.)

A. All right. (Drawing on the map.) In these areas right here this would all be I wish I had a copy of the Court order map with the colored areas. It would make it so much faster and easier.

[11] Mr. Horack: May I inquire, I don't want to interrupt our proceedings, if we would go borrow from the Court one of those maps so that we can . . .

Mr. Chambers: We have no objection to it. We didn't get a copy of the maps.

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Mr. Horack: Obviously we haven't got one either.

A. The Court required three copies.

Mr. Horack: I understand the reason why but the fact remains we don't have one.

A. We sent the Court all three copies. We rushed through to get them.

Mr. Chambers: We don't mind going now to the court.

A. Let me check. I had the fellows to fix Dr. Self a copy. I said while they're at it make him a copy. May I check and see if he has it? I believe he has a copy of that which will help and save all this time in trying to go over them again.

(The witness leaves the hearing room and returns.)

Q. We are trying to determine the way they determine the number of students in Myers Park Elementary School.

A. All right. Here we created this legend to make it clear for everyone to understand.

Mr. Horack: For the record may we identify we're looking at item 6A which is a map of the attendance areas of the elementary schools, which is a [12] colored map submitted to the Court.

A. The Myers Park area under the Court approved plan is this area here. We used the crossed hatch to indicate the original Myers Park area and the corresponding darker green color to show that portion that had been rezoned

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into Myers Park Elementary School. So that shows us the new area and it was only these children as we applied our mile and a half from this school under the amended order, it was my understanding that we were only to include those children that were more than a mile and a half from the Myers Park Elementary School. So we counted all of the youngsters in these grids.

Q. You're talking about the dark colored grids? A. The corresponding green color. We counted all of those youngsters in those grids, checking the mile and a half out to make sure those would be eligible. As we indicated in the columns here, there were a total of 235 children in that area.

Q. Would you show us how you figured the 235? A. Four of them are now being transported. We know where they are being transported. We took, then, the 153 that would be more than a mile and a half from the school and there would be 78 in these areas that are less than a mile and half from the school.

Q. All right. Now show us, if you don't mind, how you determined there were 153 living more than a mile and a half from the school. [13] A. As I demonstrated to you before on the big map, we put the templet on it that demonstrates those children that live within a mile and a half of the school and we counted only those youngsters outside that area.

Q. Is this scale here one inch equal 4000 feet? A. This is the one of 2000 and this is the one 4000.

Q. Would you point out the grids in the Myers Park district that are more than a mile and a half from the Myers Park Elementary School? A. Let me get my templet to put on that. See, this is the same area that I was showing there.

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Mr. Horack: May I inquire, Mr. Chambers, do you want him to explain the process or do you want him to figure it out?

Mr. Chambers: Both.

Q. I understand that this printout here has the number of students in the grids and we would like for him to identify the grids so we can look at the printout to see the number of kids in the grid. A. That's right. Let me get my templet and put on that.

Mr. Stein: Could you also get a ruler that we could use?

A. Yes.

(The witness leaves the hearing room and returns.)

Q. You have attached to the map a circular instrument which I understand measure one and one-fourth miles.

[14] A. That would indicated 6000 feet, that's 3 inches.

Q. I'm talking about your exhibit attached to the map. Does that measure one and one-fourth miles or one and one-half miles? A. It measures less than one and a fourth mile.

Q. Less than one and one-fourth miles? A. Yes.

Q. Would you identify the grids that are in the Myers Park district that are more than one and one-fourth miles from the school? A. That is a radius. Now, that is a radius of less than one and a fourth miles. It's not the distance we measure the way the road runs to the schools. In other words, you have to take the nearest way you can drive to the school. Therefore, you can't take the number of children straight down and say that's less than a mile and a half. You have to take the way the road runs, the nearest way to get to the school.

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Q. You're talking about applying a state standard now to the Court ordered plan. A. That was my understanding of the order we were to follow.

Q. Well, would you identify the grids now that are outside this one and one-quarter radius? A. All right.

Q. In the Myers Park District. A. 403—I got 9/10 on that; 370D.

[15] What was the first one that you got 9/10 on? A. I got more than a mile and a half.

Q. What was the first grid you indicated? A. 403B.

Q. That's entirely within the circle. A. But you have to know the distance it takes to get here, how you would drive.

Q. We have a circle that you say is one and one-fourth mile that you say you used to account for the roads and you don't use the circle of one and one-half mile. Now you're saying you include within that— A. We use it as a basic guide. We couldn't just apply that flat and say that was it entirely. We had to take our knowledge of where the roads run and how you get to the schools.

Q. Mr. Morgan, would you first of all tell us the grids that are outside this one and one-fourth mile circle in the Myers Park district? A. We have all or practically all of 370D.

Q. That's not all, it's about 75% of 370D. A. But if you will measure the distance on this road and run your car the nearest way you get to this school from this point right here, down Queens Road, right on down and get into the Myers Park School and it will be a mile and a half.

Q. Mr. Morgan, the only grid in the Myers Park district outside of the one and one-fourth miles would be 370D?

[16] A. And a portion of 430D.

Q. And a small portion of 430D. A. Yes.

Q. That's not really 430D, that's really 456B. Would

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you come here and look at this grid? Now, this is 456B, is that correct? A. That's correct.

Q. And you've got a very small portion of 456B? A. Yes.

Q. And you've got about 75% because I understand this orange color here is not in the Myers Park district. A. It is.

Q. Why is it orange rather than— A. I explained that this coloring was before. See, the new lines run here.

Q. Let's look at your map. A. It runs all the way up here like that.

Q. So you've got a portion of 370D. Would you look at your printout of the exhibits and tell us how many students are shown in 370D? A. And 456B. 456B shows a total of 7 children.

Q. That's in the whole grid, is that correct? A. That's in the whole grid.

Q. And we have only a very small portion of that included in the Myers Park district. [17] A. There are four children in the area, in that particular area.

Q. Let's look at 370D. A. 370D, there are a total of 181.

Q. Well, let's see, your printout shows 150. A. No, it shows the total, see. You have to take all the children in the grid.

Q. A total of 181? A. A total of 181.

Q. How did you figure the percentage in that district who would be included in the Myers Park district? A. Well, Mr. Harrison ran a calculation on it as we worked with it. We worked grid by grid and all of that grid would be more than a mile and a half from the school. Furthermore, some portion of these grids, although it's within the circle and within as the crow flies within a distance here, nevertheless as the car would have to travel or the child

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would have to travel by the nearest road to get to the school, a portion of those would be within a mile and a half.

Q. Well, do you have a map of the present Myers Park district? A. I believe the old line of Myers Park ran something like this. You can see right here, here's the old line, right here up like this.

Q. How did those students who were living in grid 370C get to school? Grid 370C is in the present Myers Park district, is that correct? [18] A. Yes.

Q. And according to your circle there, they are more than a mile and a half from school. A. That's correct.

Q. How do they get to school now? A. As all the children in the inner-city now get to school.

Q. How is that? A. All of them in the city, whether they are a mile and a half or five miles, they walk to school.

Q. Would the kids in the new district 370D be any further from school than the kids in 370C? A. But our order was that transportation shall be provided for all children rezoned who are more than a mile and a half. That was my understanding of the order.

Q. Well, you say presently the kids in 370C walk to school. A. I don't know, Mr. Chambers, how they get there.

Q. Do you have a bus, do you provide public transportation? A. No, we do not provide it.

Q. Isn't there a bus from the City Coach line that runs out to Myers Park Elementary School? A. I do not know. We're showing, Mr. Chambers, that of those 181 at Meyers Park that I mentioned, we're showing that 153 of them would be eligible for transportation. So we only included of the total of 335 in this area—let me make the record straight in case there is a misunderstanding about it, [19] that we took of the total I called off 181 from the printout.

Q. You said there was a total of 181 in that grid. A. We

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said 153 of them would live beyond this mile and a half limit, so I was mistaken in about—

Q. You said your circle really is a mile and a fourth.

A. As the crow flies, yes, but our experience has indicated that you can lay a ruler down or a straight line down and measure out that distance and when it actually comes to it those children will be a mile and a half or more as the roads run.

Q. Well, look at the Shamrock Gardens district. A. All right.

Q. You indicate there that 45 are included in the rezoned district and that you would have to transport an additional

45. A. In other words, there are a total—here's the Shamrock area, the original or that portion that remains in it or in the area after the lines were redrawn.

Mr. Horack: Identify that by color on the Court map submitted to the Court.

A. At Shamrock Gardens the cross hatch in yellow indicates that portion of the attendance area that will remain there. The darker corresponding yellow indicates the area that has been rezoned to Shamrock Gardens. And at Shamrock Gardens we say there are a total in the new area rezoned into it, there are a total of 302 children. There are 39 of those that are [20] presently transported and there will be 45 of them who will live in the rezoned area more than a mile and a half from the school. This would be the portion of the children that live the farthest from the school. And there would be 218 in the area that would be within walking distance of the school.

Q. All right. Now, let's use your circle again on the larger map for Shamrock Gardens and identify the grid

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that is outside of the circle. A. All right. Right here, applied on the Shamrock Gardens you can see the new rezoned area runs under this point here.

Q. Those are grids 299A— A. 299A.

Q. A portion of B. A. A portion of B and a portion of C.

Q. It's not really all of 299A, is it? A. No, it's a portion of 299A, B and C. 299—that was A?

Q. Yes. A. A portion of A, a portion of B.

Q. And a portion of C. A. And a portion of C.

Q. How many students are in 299A? A. All right. 28.

Q. How many are in 299B? A. 33.

[21] Q. 299C. A. 102.

Q. You've got about one-half of C that's outside this circle. A. All right. Of those 163 in all areas there are approximately one-half of them who will require additional transportation or they are now being transported to a school.

Q. When you have half a grid, what do you do, divide two into the total number of students in the grid? A. Yes, if we say that there is one-half of it, then there will be 14.

Q. That's the way you make your determination? A. Yes.

Q. If you've got one-third, you divide it by one-third? A. One-third is one-third, that's right.

Q. Well, the point is you don't actually have a house by house count of students in each grid. A. Yes, we do.

Q. You do have? A. Yes.

Q. Then you can tell the Court now the number of students who live in a certain zone and attend school in another zone since you have a house by house count? A. Yes.

Q. You can tell the Court that now? A. Yes.

[22] Q. It seems that all of the students in 299A, B and

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C are outside the 1957 city limits. A. Repeat your question.

Q. It seems that all of these students in 299 A, B and C are outside the 1957 city limits? A. 299A and B, yes, and a portion of 299C.

Q. Well, the portion of the students in 299C who live according to your circle more than a mile and a half from the school would be outside the '57 city limits. A. That's correct, but they were assigned to a school, Plaza Road here, that was less than a mile and a half from their home. Although they lived outside the '57 city limits, they were assigned to a school less than a mile and a half from their home.

Q. You're talking about the students in 299C were previously assigned to Plaza Road? A. That's correct.

Q. And where were the students in 299A and B assigned? A. 299A and B, all right. They were all assigned, all of these were assigned to Plaza Road.

Q. Now, where are the 30 students who are now being transported residing? A. In 299—in which?

Q. Well, you indicate in your report that 39 of those students are already being transported.

[23] Mr. Horack: What school are we talking about?

Mr. Chambers: Shamrock Gardens.

A. Yes.

Q. Where do they reside now? A. They reside in either 299A or B.

Q. And you say they are assigned to the Plaza Road Elementary School? A. That's correct. According to these lines here, if I can make out the lines I'm looking at here, that's correct.

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Q. Would you tell us from your figures there the number of students you indicate would need transportation, the total number in Shamrock Gardens?

Mr. Horack: You mean additional?

Mr. Chambers: No, the total number.

A. The total number adds up to 84. That's 84 out of the total of 163 that have been rezoned into Shamrock. No, more than that. Some are within walking distance of Shamrock. There have been 302 rezoned into Shamrock Gardens, 84 of whom have transportation, 45 of them additional transportation and 49 of them now being transported.

Q. Would you look at the Billingsville district. A. All right.

Q. You indicate a total of 128 additional students to be transported. A. That's correct.

【24】 Q. Now look at the Billingsville district. A. Billingsville is indicated on the map by the remaining portion of the original attendance areas indicated in a cross hatched blue line. The rezoned area to it is indicated by a corresponding solid blue color.

Q. Now, would you use your circle again and tell us the grids that are outside the circle? A. All right. A portion of 432C, 458A, 458D, a portion of 458C, and 485B, a portion, the majority, practically all of 485B. It would be all of 485B and 458A.

Q. All right. Would you check and tell us the number of students living in those grids? A. Did anyone take them down as I was writing?

Q. Yes. A. That's 458A, B and a portion of C.

Mr. Horack: Can we get off the record a minute?

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Mr. Chambers: Yes.

(Off the record by consent at this time.)

A. I come out with a total in just those grids that I called out, 432C, 67 pupils; 458A, 46 pupils; 458B, 57 pupils; 458C, 45 pupils; 485B, 24 pupils; 485A, 69. I show on my report 272 so I deducted those portions in that, a total of 38 children just in those grids alone that would be excluded for a part of 458C. If you want me to, I can go back and check. I think I'm in the ball park but—

[25] Mr. Horack: May I suggest that you double check the applicable grids? Not that our list wasn't correct but I got to meddling with your business.

A. I said a portion of 432C, 458A, 458C—that looks like all of C. Now, for the record, let me recap my recount. 342C, 67 pupils; 458A, 46 pupils; 458C, 45 pupils, 458D, 45 pupils; 485A, 69 pupils; 485B, 24 pupils; 485C, 17 pupils; and 485D, 22 pupils.

Q. Would you total those up? A. I wanted to recheck before I gave it for the record.

Q. OK. A. There are a total of 335 pupils in those grids. Our record shows that 112 of these are now being furnished transportation and there will be 128 additional students to be transported, totaling 230 out of the 335.

Q. How did you determine that 112 are now being transported? A. They are now being transported, the vast majority of those are being transported out of the Pinehurst Apartments to Sharon.

Q. Are they the only ones? A. I said a large portion of the 112.

Q. Where are the others?

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(Off the record by consent at this time.)

Mr. Horack: Explain for the record just exactly what you said.

[26] A. In explanation of the 112 who are now being transported, I made the statement that the majority of those were coming out of the Pinehurst Apartments. Here is where McMullen Creek crosses Providence Road and all of those apartments are in this new area that has been reassigned to Billingsville Elementary School.

Q. Grids 485A and B? **A.** Pinehurst Apartments are all—a portion of them might be in B, yes.

Q. Are there other students—

Mr. Horack: He didn't explain where those students were previously transported.

A. These students in here are presently in the Sharon attendance area and are being transported to Sharon at the present time. This was a former county school and this, you see, was outside the '57 city limits.

Q. Are there other students in the rezoned Billingsville district who are also being transported besides those in the apartments you mentioned? **A.** There are a few in 485B and are now being transported to Cotswold and that will account for the 112. The 128 I'm accounting for for additional transportation will be all of these children in this area that are now within a mile and a half of Cotswold Elementary School and are now walking to Cotswold.

[27] Q. You're talking about grid 458A . . .? **A.** 432C, 458A and 458 C and D.

Q. Now, are all of those grids or the areas that you indicate you will provide transportation for for the Billingsville School outside the 1957 city limits? **A.** Yes.

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Q. You have estimated in a previous affidavit that it would take an hour and a quarter for the students in the paired schools to get to school. A. In my previous statement I stated that it would require a bus route of approximately two and a half hours a day averaging throughout the entire system. You cannot pick out an isolated situation and say that that is it, in an area like we were just looking at. You have to average it throughout the entire system and that's what we estimate the travel time it would take a bus.

Q. Two and a half hours round trip? A. Round trip, yes, sir.

Q. You're talking about to school and then in the afternoon back home. A. To school and back home.

Q. Are you talking about from the time the bus driver leaves home until he stops the bus after he unloads the students? A. Yes, I am.

Q. You're talking about the total time. A. I'm talking about the total mileage that a bus will have to [28] travel.

Q. From the home of the driver. A. Because our route description describes the route from the point where it leaves the driver's home to the last stop where it discharges pupils and parks.

Q. Mr. Morgan, why did you give the total time for the travel rather than one way trip as you have been doing for buses now operating? I show you, for instance, copy of the principal's monthly reports for the period December 1 to January 7, which is an exhibit that has been introduced. I note on that exhibit that in your reporting now you report only one way for time. A. Well, for the purpose of figuring the total mileage, I just figured the total mileage and total travel time. I was not figuring mileage one way and time one way. I was taking the round trip and I was using the

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round trip and the total mileage for that round trip. Our state form simply calls for it in this manner, total mileage for the route, and then they ask just time required to travel one way.

Q. My question is, you have been reporting time for just one way. A. Yes.

Q. But in this instance for the Court ordered plan you report time round trip. I was just wondering why you would report it for the round trip rather than the way you have been doing. A. No particular reason other than to show the total mileage and [29] the total travel time.

Q. Now, would you look at your map again, the one showing the paired schools. A. Would you like me to put that up?

Q. Yes, if you don't mind. A. This is the one we submitted to the Court.

Mr. Horack: Mr. Chambers, would you again identify for the record which map it is we're looking at?

Mr. Chambers: We're looking at map #1. The map we are looking at is the map showing the paired schools as submitted to the Court for the elementary schools.

Q. This map shows the schools that have been paired under the Court ordered plan. It also has a scale of one inch for 4000 feet. A. That's correct.

Q. All right. Now, would you take your ruler and let's start with the pairs here. How far is Albemarle Road from Lincoln Heights? A. That's a total of 10¼ inches.

Mr. Horack: May the record show that the witness is making his measurements as the crow flies.

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Q. All right. Now, how far is Idlewild from Lincoln Heights? A. Approximately 10 inches.

[30] Q. And how far is Merry Oaks from Lincoln Heights? A. Approximately $5\frac{3}{4}$ inches.

Q. How far is Hickory Grove from Tryon Hills? A. $8\frac{1}{8}$ inches.

Q. How far is Briarwood from Double Oaks? As the crow flies, $5\frac{1}{2}$ inches.

Q. And Devonshire? A. 7 inches.

Q. We're talking about as the crow flies. Approximately how far is it by route from Briarwood to Double Oaks? A. Well, I estimated this for the average. I can only tell you what we figured the average throughout the entire system and not isolating any one particular situation.

Q. Well, you would have to have some figure for all of the situations to get an average, wouldn't you? A. Yes, and that was based on our experience and the experience we are having with some of the in-city transportation now from the driver's home to pick up the youngsters to carry them back to school.

Q. Have you or have you not determined how far Briarwood is from Double Oaks? A. The exact mileage as to the way the bus would run, this has not been done and will not be until the assignments are made and the principals run their routes.

Q. How did you determine your average? [31] A. Based on our experience with the in-city transportation and knowing the experience from where the drivers live and our problems with locating drivers in the proper location.

Q. Well, Mr. Morgan, are we talking about in terms of your estimated average the distance from the school to the school to which the students are being assigned or the dis-

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tance from the driver's home around all of the students in the particular district and then carrying them over to the school? How are you arriving at an estimate? A. There are going to be many routes that will be more than the thirty miles daily. There will be other routes, of course, that will be less than the thirty miles.

Q. How are you determining that? A. Based on our experience and our operation with our present fleet.

Q. Could you tell us what that experience is so we can know what you are using to make that determination? I don't presently see any school there in the clustered schools that is more than fifteen miles from the other school or is fifteen miles from the other school. A. I have not said from school to school that it was fifteen miles. I am saying the distance the bus will travel will average thirty miles daily or more.

Q. I would like to know how you make that determination. A. I didn't pin it down. When we took the average I didn't pin [32] it down when we just took the elementary schools alone. We took into consideration and my testimony was for the entire system.

Q. Well, let's talk about the clustered schools. How did you determine an average for the time it would take for these buses to make the routes that you would have to go? A. Well, I had a principal to check a given situation the way his bus would have to go. I also secured information from the Transportation Department based on the experience of routing the buses and where the drivers live that it would take that mileage.

Q. Is any of that information written? A. No, sir.

Q. We are trying to find out how you made your determination and we would like to know, if possible, what you are basing your average on.

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Mr. Horack: I believe he already answered that.

Mr. Chambers: He said experience and we'd like to know what that experience is.

Q. Is it safe to say, Mr. Morgan, you really don't know?

A. No because I think our experience will prove and when the principals actually get the children assigned and work out the bus routes and we add them all up, I think you'll find that our figures are fairly accurate.

Q. Well, tell me what the experience is so we'll know what you [33] are making your estimates on. A. Well, you're speaking only of clustered schools and my testimony was based on all schools, junior high schools, senior high schools and elementary schools.

Q. Well, talk about the senior high and junior high for the present purpose. We want to know how you made a determination that it would be approximately an hour and a quarter for the students to get to school. A. Well, I had Mr. Harrison to run several checks on given situations and to. . . .

Q. Let's talk about those checks that Mr. Harrison made. Do you have those in writing? A. No, sir, I don't.

Q. What checks did he make? A. As I say, I had one principal to check who is presently having experience at Idlewild and the way that it would be necessary for him to route his bus from Idlewild school to Lincoln Heights school and on the basis of his experience on routing buses, I asked him to make a run of that to show what it would do. I didn't pick out necessarily any other school, I just took that as one example of a principal who had considerable experience in making and he gave me the way his bus would have to run, which would be out Central Avenue and up Trade Street, across Trade Street to Beattys Ford Road and up Beattys Ford Road and into Lincoln Heights.

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He said that [34] this is the safe way a bus could be routed. That was one check I used. Then I asked Mr. Harrison to also run a check and to see what several typical situations would be and to give me an average based on that, where drivers lived and where the children lived and the best way to get to the school.

Q. What checks did he make? A. He ran some checks on schools and I don't know which schools he ran them on. I just asked him to give me what would be a fair representation so we would make sure that we were correct when we put our figures down.

Q. And you don't know what he did. A. I don't know the particular schools he used, no.

Q. Is he here? A. No, sir.

Q. Where is Mr. Harrison? A. I suppose he is at the Transportation Department or out on some of the routes maybe, I don't know.

Q. What time did the principal from Idlewild tell you it would take to get from his school to Lincoln Heights? A. Before I answer that, let me say this. In calculating the mileage, the speed at which we could go through town, we felt that an average of 12 miles an hour was as fast as we could travel through town. The principal, when he made his check, used his car and did not take a school bus and make the run. [35] As I recall, he gave me a distance of either 13 or 14 miles one way and that just included the distance from his school to the Lincoln Heights School. He did not take into consideration where the driver would live or how many pupils would have to be picked up beyond that point who would live more than a mile from Idlewild School who would be going there.

Q. What time did he tell you it would take? A. He said he could not judge it by using a car versus a bus.

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Q. He didn't tell you how long it took him to drive?
A. No. Just from the school I guess we could multiply it out and travel 12 miles an hour. What would 12 miles an hour times 13 or 14 miles give you in time?

Q. I thought maybe you had some figures that you were using to make your estimates. A. I had on distance but not on time because I couldn't compare a car's travel time with that of a bus.

Q. Now, did Mr. Harrison give you some estimate of time? A. His estimate of time was that it would require throughout the entire system an hour and a quarter travel time on an average for all the routes.

Q. Is that from the bus driver's home? A. Yes.

Q. Is that picking up students in the neighborhood also?
A. It's allowing for picking up some at the farthestmost point.

Q. Would the time be reduced if you just used the time from [36] school to school? . . . rather than pickups.
A. Yes. But by law, if they are more than a mile from the bus route we've got to route the bus to them. This is state law.

Q. If they walk to school as they are doing now? A. Well, you're mixing apples with oranges now. A child walks to school if he is less than a mile and a half. However, the law states that we must route a bus, if he's transported to school, it must be routed within one mile of his home. So all of those children who are more than a mile from the school, the bus must be routed to pick those youngsters up.

Q. The only question I'm trying to find out is whether you plan to route the buses for the clustered schools from school to school or around the area to pick up the students. Of course, that will have some bearing, too, on the number

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of buses you will need. A. Not on the number of buses but on the travel time.

Q. Well, would you state whether you have tried to route the buses from school to school or some other way? A. Depending on what we find to be the safest way to get the children to school. If we find that it's unsafe to congregate 500 children at a school with buses coming in another direction in there, it may not be wise to do this and we would certainly want to route the buses to provide the safest way for the children to get to school.

Q. At present you don't know how you're going to route the buses. [37] A. Not until the children are assigned and the principals can pinpoint where they live and then make their runs and set their stops, and so forth.

Q. And you don't know how much time it would take to get the students to school. A. Well, I'll state my original estimate. There will be some children that it will require an hour and a quarter or more.

Q. Well, now, have you seen the charts that were prepared by the plaintiffs of the time and distance presently required for transporting pupils to school? A. No, sir.

Q. Let me show you these charts. This is for the period September 5 through October 4, 1967. That was taken from your principal's monthly reports and it shows that you have 48 buses now traveling an hour and a half.

Mr. Horack: Does Mr. Morgan understand that this chart was prepared by you?

Mr. Chambers: I just said that.

A. Yes, sir. I have not seen it before. But you must know the circumstances on the routing of each bus and where it runs and how it runs and how many stops it makes,

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what kind of traffic is involved before you can take the existing transportation, which the vast majority of it is out either in the periphery or the rural area. This is where you get averages like this, where they could make better time traveling than they can [38] interstate traffic.

Q. We are going to talk about the present inner-city transportation but for the purposes presently we just wanted to show from your record what was presently happening in the city. A. I don't know.

Q. I see three buses that are traveling four hours a day. A. Yes. You have to know the circumstances surrounding that before you know what's taking place on that because that is in a section that is isolated. I know of one example of a situation that's isolated around Lake Norman and they must travel out into Iredell County and come all the way back down in order to get there. That's bound to be an isolated situation.

Q. I understand that one of those buses goes to Garinger High School. That is in the city, is it not? A. I would have to check the records. Garinger is located on the periphery. It's in the present city but it's out in the periphery. It's not in the inner-city.

Q. Is not Eastway Drive that runs by Garinger one of the major thoroughfares? A. Yes. But the roads that branch off it to run out into the rural area of the county.

Q. Well, I recall some of your testimony in the other depositions where you indicated that you have some problem with student drivers traveling long periods of time and your records [39] indicate that the bus going to Garinger is driven by a 16-year old student. That's takes three hours and fifty-five minutes to get to school. A. How many loads does the bus make?

Q. Three. That students seems to be able to make his

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route, drive three hours and fifty-five minutes one way and get to school. A. I don't know what his schedule is and what his load is. He may miss as many as two periods a day.

Q. The average that you have given for transporting pupils under the Court ordered plan would be the present average the buses are traveling in the system today. In fact, it would be less than the present average, would it not? A. I have not made that comparison.

Q. Did you not submit an affidavit testifying that your present average was an hour and thirty minutes? A. I'd have to check back. I have talked for seven or eight hours. I would have to check back and see.

Q. Is it true that your buses today travel an average of an hour and thirty minutes one way? A. If that's what I testified, if I testified to that we must have made some check to verify it. I don't recall.

Q. Do they or do they not, if you know? A. I don't know the average other than what you were showing me there.

[40] Q. Do you know whether they travel an average of 47.9 miles a day? A. I'd have to go back, Mr. Chambers, and check our records.

Q. Do you have those records available? You're talking about taking your principals' monthly reports which we have already introduced? A. Yes.

Q. Would you take your rule again and let's complete the distance in the paired schools. Would you tell us how far your rule shows it is from Huntingtown Farms School to Bruns Avenue? A. $9\frac{5}{8}$ inches.

Q. How far is Sharon School from Bruns Avenue? A. $8\frac{7}{8}$ inches.

Q. How far is Starmount from Bruns Avenue? A. $9\frac{1}{8}$ inches.

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Q. How far is Park Road from Marie Davis?

Mr. Horack: I'll object to this, Mr. Chambers. The maps are in the record and it's purely a mechanical thing to measure them. All of these schools are as the crow flies, the distance indicated by a rule extending between any two designated schools. I don't think we need to sit here and have Mr. Morgan do all the mechanics of all the ruler measurements.

[41] Mr. Chambers: We'd like to get it in the record.

Mr. Horack: It's already in the record, the maps are in the record.

Mr. Chambers: In testimony in the record.

A. Mr. Chambers, in all sincerity let me point out to you again and I know you understand that measuring this doesn't tell you anything. It just gives you the distance as the crow flies. You have to know the way the roads run and actually run the road to get there. It doesn't tell you anything.

Q. Mr. Morgan, you didn't really know how far it was from one school to another. A. I have not measured the distance. I told you that until the routes are established and the way the buses run, we will not know that.

Q. Well, we're trying to get an estimate. A. I can give you school by school, of course, as we are doing right here. Unless you're checking my measuring against your measuring to see whether we come out the same. Marie Davis to Park Road $3\frac{1}{8}$ inches.

Q. What about Pinewood to Marie Davis? A. $3\frac{1}{2}$ inches.

Q. You don't have an estimate, Mr. Morgan, of how far those schools are apart. A. The only estimate I have is

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what I originally testified as the distance the buses will have to run.

【42】 Q. You testified that in determining whether to provide transportation for students that you used the measurement of one and one-quarter miles. Can't you do the same thing for the schools or would a different rule apply?

A. Well, as I said, the averaging out of the distances, it would average out that, but that scale just tells you that point and beyond that point you'd have to actually, as I say, measure it on to the end of the attendance area to find out the accurate figure.

Q. You mean that a different rule would have to apply in determining the distance between the schools than between the home of the child? **A.** No. We did this to get the number of children who would be transported.

Q. Did you think that was a safe and fairly accurate way of determining the number of children, using the measurement of a mile and a quarter? **A.** Yes.

Q. Why don't it also determine the distance from school to school? **A.** Repeat that question.

Q. Why wouldn't your same method for determining the distance of the child's home from the school, namely, the mile and a quarter circle that you had, also determine the distance from school to school? **【43】 A.** Well, as you move out from a relatively small area the roads begin to branch out in many directions from that and feed into the main roads.

Q. You're saying that the same rules would not apply, is that what you're saying? **A.** I'm saying you'd have to take each individual bus route into consideration before you could.

Q. You have made an estimate of the average on some information you say you got from Mr. Harrison and you

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don't have any more accurate way of determining the distance from school to school than what you have given us.

A. No.

Q. Now, moving to your estimated number of buses, I take it that you again have estimated the number of students who need transportation and divided it by 44. A. No, sir.

Q. All right. Would you turn to your estimate of the number of buses that would be required?

Mr. Horack: May we get off the record?

Mr. Chambers: Yes.

(Off the record by consent at this time.)

RECESS FOR LUNCH

A. Mr. Chambers, for the record I wanted to clarify your question so I'll make clear to you about the ruler. You asked me why if I did it with a templet on that why I couldn't do it [44] with the ruler the same way for the balance of the area and I stated that as you move into the outer area and a bigger circumference the roads run out in different directions and spread out further. But we use the ruler just as you were using it there to estimate mileage but we have found from experience and trying it out many, many times in the past that using the distance that the ruler will measure as the crow flies—for example, we measured one there from Lincoln Heights to Idlewild. I believe I stated that that was 10 inches. Now, the method which we use to calculate to give us an idea of exactly how many we are speaking about—

Q. How many miles? A. Yes. Would be on this map, which is a 4000 foot map, a scale of 4000 feet, then that

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would give you 40,000 feet measuring it that way. We have found through experience that by adding 25% to measuring it that way will give you a fairly accurate mileage distance as the road runs to the school. This comes about only through the vast experience we have used in trying this method out time and again. I didn't make that clear to you. I wanted to make sure when you asked me could I, yes, we can but you must add 25% to that.

Q. What does that give you? A. That would give you, of course, 10,000 more on to that which would give you 50,000 feet.

Q. So all of these schools, then, you could estimate. [45] A. From school to school, we can, but beyond that point, now, we cannot. There are some other factors that have bearing on it.

Q. What other factors? A. If I might use this example here when you measure out to this school here.

Mr. Horack: What is that school?

A. It's Idlewild, from Lincoln Heights to Idlewild which is the one we used where we had ten inches for easy figuring purposes. When you figure that, you can figure the distance fairly accurate from Lincoln Heights to Idlewild. Now, not having that experience in the inner-city streets with this—this is the method we use in the outlying areas and I have not applied this same principle and not had the same experience of applying that rule to the inner-city and to say unquestionably that it would work, I could not. But the other point that I was making . . .

Q. Mr. Morgan, just on that point, we were talking a moment ago in terms of the rezoned areas and they were inner-city, as I recall, and you felt that you could use your

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one and one-quarter mile diagram for those. A. Yes, but the rezoned areas are areas tied more closely together than what we are talking about here and I don't know the network of roads and all coming across here. But I could assume that we could apply it and get it fairly accurate.

[46] Q. The areas you're crossing are the same areas you used for the one and one-quarter mile, aren't they? A. Yes, but I say I have not had the experience of whether or not a direct route from Lincoln Heights over here, the manner in which it has to be run. I testified before either 13 or 14 miles. What would this figure out? If I divide my 5280 into that, that comes out to $9\frac{1}{2}$ or close to 10 miles, we'll say. Now, my statement was that the principal gave me by car the way he would have to route the bus. That came closer to being 13 miles. That would be a principle which we'd apply or a method we would apply but you never actually know until you get on the ground and run it. The other factor that I was pointing out that would be different would be this right here. If on a road like this at this point here, which is a road that runs by Idlewild School, Idlewild Road, there is a child that lives more than one mile from this school, then that bus must be routed to pick that youngster up and, therefore, the bus driver may live at this point but instead of coming to here to pick them up, he may have to run the route all the way out here to a safe turning around point and turn around to pick the youngsters back up that live a mile from this walking point here.

Q. Aren't those children already bused at Idlewild School? A. If they are more than a mile and half they are, yes. But you were asking me the question could they not walk into the [47] school. Your question to me was could they not walk into that school and be picked up.

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You're stating now can these children not ride that same bus and ride it into Idlewild and transfer?

Q. Yes. A. Yes. That adds mileage to what that child travels. He's not going to travel from here to here, he's going to travel from here to there to there. I'm getting at total mileages he is going to travel.

Q. The point is that in the Idlewild district the children are already being bused to school and you have the same compact areas in the inner-city schools that you are presently operating on and those children are already walking to school and I don't think that any of them are more than a mile and a half from the school. A. Then using our calculations here, then, you're just going to transport them 10 miles farther than now.

Q. I understood that's what the Court ordered. A. That's what I'm saying but I thought you were trying to get at examples of how children. . . . I just wanted to make sure I cleared it up for you. I was trying to clear it up, at least.

Q. Another thing, the 12-mile per hour trip that you talked about for the Idlewild School, was that contemplating your bus stopping on the route to the school? A. This was calculating the overall time. There would be times [48] when he would make more than 12 miles an hour. There will be times when he will make zero miles per hour when he stops. So we figured a fair way to average it out would be the 12 miles. This way my opinion. Mr. Harrison thinks I am too high. He does not believe it will average that but I was of the opinion that we could probably average that.

Q. If the bus ran from school to school would it average more than 12 miles an hour, instead of stopping? A. A bus can certainly average more when it travels straight

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non-stop but remember the stop lights in the city is going to slow you down.

Q. I understand but you have an overall average of 12 miles an hour now and you're stopping to pick up children. In addition you're stopping for stop lights. A. And I pressed on this say one time we get him he may not average that in here, no. One time you get him out here, he can move freely.

Q. We're talking about 12 miles an hour now on the overall trip from wherever he picks up the children to the school to which he is carrying them, is that correct? A. Yes

Q. And that includes the inner-city traffic. A. That's correct.

Q. And you say that if the bus ran just from the school to school without stopping to pick up children that the average would [49] be greater than 12 miles an hour? A. No.

Q. It would not be? A. No.

Q. Mr. Morgan, maybe you don't understand the question. If you average now 12 miles an hour on your overall trip, stopping to pick up children, and you're going to run directly from school to school, are you saying you would have the same mileage per hour? A. Let me see if I can explain it to you this way. In working to figure out this average miles per hour, we made allowance that the children in highly compact areas would be able to walk into the school there and be picked up and taken on a trip without picking up additional children, just the normal stops as required by heavy traffic in the inner-city, stop lights and intersections and whatever other problem they run into, and coming out to this school here.

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Q. That's Idlewild? A. That's Idlewild School from Lincoln Heights. By the same token, we said that this child traveling in the other direction, that the bus must stop to pick them up out here and it might be longer going this way and what we tried to do is to take throughout every school we had and try to get an average which is a dangerous thing to do, I realize, but we tried to get an average and to make sure we had as accurate an average [50] as we could come up with on the travel time and we did take those things into consideration when we were computing it.

Q. In computing the 12 miles per hour average did you anticipate the bus stopping from Idlewild to Lincoln Heights to pick up children?

Mr. Horack: I believe he answered that, that that was not as you suggest but an overall average of all schools everywhere.

Mr. Chambers: I am asking in that overall average is he anticipating the bus stopping on the trip between Idlewild and Lincoln Heights.

A. No, but I was anticipating it stopping before it got to Idlewild.

Q. You testified a moment ago that children who would be west of Idlewild who would be living more than a mile and a half from the school would have to be picked up and transported over to Lincoln Heights. A. A child living more than a mile from the school, yes.

Q. West of Idlewild? A. I don't remember that I testified west, I meant east. This is east.

Q. Take the child who would be west of Idlewild and is more than a mile and a half from school. A. All right. Then he must be transported into Idlewild and from his

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present transportation transferred onto a bus at [51] Idlewild, doubling back over the same route he came, to go to Lincoln Heights.

Q. Does your estimate anticipate that or does it anticipate the bus going from Idlewild to Lincoln Heights stopping to pick them up? A. I anticipate the average of all of them working together.

Q. Was the factor of the bus stopping on the way from Idlewild to Lincoln Heights considered in your determination of 12 miles an hour average? A. Mr. Chambers, what I'm saying is that one time the bus gets its load to here at Idlewild, then it would not necessarily be picking up any more children on the way to Lincoln Heights.

Q. You did anticipate that in making your average of 12 miles an hour, the bus stopping? A. The bus would have made its stop when it picked up its last child at Idlewild to go to Lincoln Heights and would have had its load and, therefore, would not be picking up any more children. But we might find it advantageous, if we had 36 children on this bus at Idlewild, to run this bus by here and stop and pick up those children on the way to Lincoln Heights. This way the child is going to be involved in the same amount of time.

Q. The only question I'm asking is did you consider that in determining that the bus would travel an average of 12 miles an hour. [52] A. We took all the factors into consideration.

Q. Now, if you eliminated that factor, that is, the bus stopping, would your average still be 12 miles an hour? A. Let me make sure I understand the question now. You're saying that if the child was brought into Idlewild and put on the bus then?

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Q. Mr. Morgan, in making your average of 12 miles an hour, one assumes you talked about the speed limit of the bus, the speed limit of the city, that is, to travel 35 or 20 miles, whatever it is, an hour, the stop lights the bus would have to stop at and the distance and what the bus would be doing on the route from wherever it was going to where it was going. Now, one of those factors that we understood you to say that you considered in determining it would run an average of 12 miles an hour over the trip was that the bus would stop en route to the school to which it was going. A. It could or could not.

Q. Well, we asked if you had anticipated that it would and that's all we're trying to find out. A. We're not tuned in on this. I'm not tuned in with you.

Q. Well, let's move to something else. Would you use your same 25% addition to the measure of inches on Park Road and Marie Davis to get how far those schools are? A. We would use the same method on all schools to determine our estimates until the buses are actually routed and the stops [53] set up. I gave that distance.

Q. Marie Davis to Park Road is 3 1/8 inches and what was your estimate of the distance between Pinewood and Marie Davis? A. We used Park Road, approximately three miles.

Q. Let's turn to your estimate of the number of buses that will be required. Before getting into that, Mr. Morgan, we want to get these distances in inches between schools because we don't have a copy of the map. We would like to get them in the record. A. Mr. Chambers, let me ask you this, we will have to make some copies of these maps. Well, we can do it here. I was just trying to save some time.

Q. Would you give us the distance between Hidden Valley and Druid Hills? A. 3 7/8 inches.

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Q. What is the distance from Beverly Woods to First Ward? A. Call it $7\frac{1}{2}$ inches.

Q. What is the distance from Lansdowne to First Ward? A. $8\frac{3}{4}$ inches.

Q. And from Olde Providence to First Ward? A. 11 inches.

Q. What is the distance from Ellenbrook to Oaklawn? A. 5 inches.

Q. And from Paw Creek to Oaklawn? A. 8 inches.

[54] Q. Paw Creek Annex to Oaklawn? A. 7-15/16.

Q. What about Tuckaseegee to Oaklawn? A. 7-1/16 inches.

Q. What is the distance from Hickory Grove to Tyron Hills? A. If something is going to check on this, I want to make sure I'm right. I don't know if that makes that much difference. $8\frac{1}{8}$ inches.

Q. What is the distance from Montelaire to University Park? A. $10\frac{1}{8}$ inches.

Q. What is the distance from Rama Road to University Park? A. $10\frac{5}{8}$ inches.

Q. What is the distance from Selwyn to Villa Heights? A. $6\frac{1}{2}$.

Q. And from Windsor Park to Villa Heights. A. $4\frac{1}{4}$.

Q. From Winterfield to Villa Heights? A. $4\frac{1}{2}$ or $7/16$.

Q. That covers them all. Would you look now at your estimate of the number of buses. At East Mecklenburg you indicate that you have estimated you have 465 additional students to transport and that you would need 11 buses. A. Yes, sir.

Q. Now, would you tell us how you arrived at this 11? A. Yes, sir. For the senior high schools we calculated, as we [55] have on all of this, that we use 54-passenger buses.

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Now, this is a figure that we have used standardizing throughout the entire system using this size bus. Realizing that in some cases we will be able to use a larger capacity bus and in other situations it will require a smaller type bus. Mr. Dark, in discussing city transportation with us some time ago when it appeared that the legislature was going to enact a law providing transportation for all, stated to us that he felt like in an area such as ours it might be wise for us to go to 48 or 36 passenger buses but, nevertheless, for our purpose here, we have stuck strictly to the 54-passenger capacity bus. Now, a 54-passenger bus has nine seats on each side of the bus for a total of eighteen seats. Each seat has a span of 39 inches. In our calculations for seating adults, which the majority of seniors are adults, we figure it takes 18 inches rump space for each child, thereby you can only seat 36 senior high school children on a 54-passenger bus. For our calculations here for junior high schools we used a figure of 40 children per bus, and we did this school by school. So, to answer your question, at East Mecklenburg 465 children, we divided 40 into that at that school and came up with 11 buses with 25 children over. So we said that. . . .

Q. That you'd use 11 buses. A. We'd use 11 buses, yes, sir.

Q. Did you consider the buses already operating in that school [56] district? According to the principal's report you now have several buses now operating in the East Mecklenburg school district. I call your attention to the principal's report beginning November 27, 1969, and ending January 9, 1970—it shows presently East has one bus transporting 44 students. A. The average number transported daily on the first trip. The first trip is to East and

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it shows 44, that's correct. By the same token, it shows it transporting only 39 elementary children. You see that?

Q. On the second trip? A. On the second trip, yes.

Q. And 5 more on the third trip. A. Well, this third trip I would have to check to see where that bus runs. The third trip could very easily be when it makes its second trip to Lansdowne that that same bus picks up five drivers and this bus runs to East Mecklenburg with the five drivers.

Q. But it shows that it transported 44 high school students to East Mecklenburg. A. Yes.

Q. On the first trip. A. On the first trip, that's correct, and, Mr. Chambers, I'd have to know again exactly where that bus route is. That's only 9 miles that it's running and it could be very easy that the last four of those children are picked up right close to [57] the mile and a half limit which means they'd only have to stand for that short distance. You'd have to go back and know the route description of this to tell exactly what is taking place.

Q. I understand that but the fact is that it presently transports 44 high school students on the first trip to East Mecklenburg and 39 elementary students to Lansdowne and five more students on a third trip, is that correct? A. The five more would be the system where this bus in this compact area from Lansdowne to East Mecklenburg is a relatively short distance and the drivers have to get over there and we allow a bus to carry the drivers to the school. This is the only way we can get drivers.

Q. Here's a second bus going to East Mecklenburg that carries 58 students to high school on the first trip, 33 students to Idlewild on the second trip and 4 more students on a third trip. A. That's correct, high school 58.

Q. And 33 to Lansdowne on the second trip? A. That's correct.

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Q. And 4 more on a third trip. A. Right.

Q. Here's a bus, the driver's name is Hugh McCrory, that carries 32 students to East on a first trip, 38 students to Oakhurst on the second trip and 1 student on a third trip, is that [58] correct? A. I would assume that the 32 and the 38 are correct. If that's the only bus at Oakhurst, then . . . I don't know.

Q. It shows further on in the column that the 1 student on the third trip goes to East. A. That's the only bus at Oakhurst. That's the only reason for it.

Q. That bus makes three trips, is that correct? A. If you want to call the trip from Oakhurst to East Mecklenburg the third trip. It's officially recorded it runs with no children on it.

Q. It's making a trip from Oakhurst to East. A. It's making a trip from Oakhurst to East to take the driver over there and have it serviced as well. That's the central service point.

Q. That's the third trip the bus makes. A. That's right.

Q. Here's another bus driven by Ralph Marett. It carries 39 students on the first trip to McClintock and 2 students to East. Is that correct? A. Yes, two drivers. Two students the second trip . . . Mr. Chambers, to know exactly on these reports, what they are doing, I'd have to call the principal of East Mecklenburg in to explain this third trip and these second trips with 1 or 2 children. All I can do is to give you the experience that I [59] have stated there that I think those are drivers rather than students.

Q. Well, Mr. Morgan, the records show that you have been rather liberal in the number of students the buses carry and also the number of trips the bus makes under the present system but under the estimates you make here you have the bus making one trip and carrying a limited number

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of students. Will you explain why the difference? A. Run that through again.

Q. Your records show now that you permit a bus to carry more than your 40 students that you have indicated and the bus to make more than the one trip as you indicated and under your estimate for the additional buses that would be needed you say you're going to have one bus making one trip carrying 40 students. Would you explain why the difference? A. By the same token you see one bus here carrying 19 children and why the difference there? I can't explain the difference to you without knowing the route.

Q. The 19 students are on a second trip, are they not? A. First trip.

Q. And how many on the second trip? A. 19. So that indicates that we're not putting them. . . .

Q. They are not going to East, though, are they? A. These are smaller children and you can put many more elementary children on a bus than senior high school children.

[60] Mr. Horack: May I ask him a question off the record?

Mr. Chambers: Yes.

(Off the record by consent at this time.)

Q. Mr. Morgan, in an affidavit that was submitted by the Board from Mr. John W. Harrison, Sr., he attaches the explanation for the principals' monthly bus reports. Would you read for the record what column 8 is supposed to show? A. Column 8, maximum legal capacity of bus. The rated seating capacity of North Carolina public school buses is based on minimum standards for school buses

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adopted by the 1964 National Conference on School Transportation. In rating the seating capacity of a school bus, it is assumed the bus load will be comprised of pupils in grades 1 through 12, having various weights and sizes. Under the rating standard each standard 39-inch seat will provide seating space for three pupils. The pupils seating capacity to a particular school bus may be calculated by multiplying the number of bus seats by 3. The State Board of Education, under authority granted by statute, permits local school authorities to assign to a bus and transport at the same time pupils in excess of the bus rated seating capacity by 25%. Aisle space in the bus is sufficient to provide one and one-half square feet of standing space for each pupil standee. Grab handles on top of each seat are provided for each standing pupil. The maximum legal [61] rated capacity of a school bus may be determined by referring to the following table: The table gives the type of bus for conventional type buses, for transit type buses. Number seats per bus; under conventional type buses panel 12, 16, 18, 20 and 22; the number seats per bus transit type buses, 8, 10, 12, 22, 23, 24, 26; rated pupil seating capacity for conventional type bus, 18, 36, 48, 54, 60 and 66; for the transit type buses, 20, 25, 30, 66, 73, 72, 78. 25% of rated seating capacity conventional type bus, 0 with an asterisk saying no standees permitted due to lack of standing space, 9, 12, 14, 15 and 16; for the transit type buses, 5, 6, 7, 16, 18, 18, 19. Rated pupil maximum capacity, conventional type buses, 18, 45, 60, 67, 75, 82; for transit type buses, 25, 31, 37, 82, 91, 90 and 97.

Q. Now, the present state regulations and what appears to be the practice as shown by the principals' monthly reports is that you transport more than 40 senior high school

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students on a 54-passenger bus, is that correct? A. We're transporting 44 students on a 75 capacity bus.

Q. Now, that 75 capacity is 25 times the seating capacity. A. According to those records, whatever it is. I'll have to go back.

Q. Is that correct? A. I don't know. The chart for a 75 conventional bus would have a total of 10 seats on each aisle, a total of 20 seats. Is [62] that your question?

Q. As I understood column 8 from what you read, the rated maximum capacity would be 25 times the seating capacity. A. The rated pupil seating capacity is 60 with 15 standing.

Q. Column 8 asks for the maximum legal capacity of the bus? A. The rated pupil maximum capacity was 25%; on a 54-passenger is 67.

Q. Right. The rated maximum capacity of the bus driven by George Johnson to East is 68 and that 68 represents, does it not, 25 times the seating capacity on the bus? And in that bus you transport to East 58 students. A. This chart does not show maximum legal capacity 68.

Q. It shows 67. A. It shows 67.

And it shows on that 67 capacity bus 58 children being transported to East Mecklenburg.

Q. And that is your 54 seating capacity bus that you have been talking about, is it not? A. That would mean, yes, on the seating capacity there would be. . . . That would indicate, based on what I have said, of the 36 seated on a bus that there must be 22 standing or there are some little folks on the bus, one. There are some little seniors on the bus where they are able to get three to a seat.

Q. Are you stating that you presently have 22 students standing on a bus? [63] A. No. I do not know, Mr. Chambers, without seeing the bus, and I don't know how

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close . . . even if this bus is doing this, I don't maintain that is right and is a safe way to transport them.

Q. The fact is that you can carry more than 40 students on a 54-passenger bus, more than 40 seniors. A. Yes, you can put more than that on but I don't think it's a safe thing to do. It wouldn't be necessarily by choice.

Q. I notice that the state rules talk about the rules being applicable to all students grades 1 through 12 for the seating capacity. A. That's what the state rules say.

Q. And your practice in the system now shows that's what you're doing. A. The practice shows that we are now . . . we don't mix them all up on buses. Those are all senior high or elementary or junior high school children.

Q. I understand. The point is that you limited your number of students that you would transport on these additional buses to 40 and I was curious why you would have a different rule for the additional buses than what you presently operate under. A. Well, in transporting the distance we will be, we think this is the safest way to do it.

Q. They are not going to be transported any further than they [64] are already transported. A. I don't know. I can't tell you how many of those are real close to a school. There may be 15 standing but they might not stand but a mile and a half. We don't think it's safe, nor should children with books and other gear they have to take back and forth to school try to stand on a bus through the city of Charlotte.

Q. Are you telling the Court that on the 54-passenger bus you can't put 54 senior high school students sitting? A. That we cannot seat 54?

Q. Yes. A. No, sir, I don't think we can.

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Q. Well, your rules indicate that you can. A. That's what the rules say but we have to judge it from our actual experience.

Q. Your actual experience shows that you're doing it. A. We don't show we're seating them.

Q. Now, for East you say you will need 11 more buses and I would like to know whether you considered the buses that you already have operating there in making that determination. A. Yes, we did.

Q. All right. Would you tell us what consideration you gave to the buses you have operating there now? A. The buses that we have operating in the present East Mecklenburg area—the area that has been rezoned to Independence, [65] those children who are now eligible for transportation and are riding to East Mecklenburg would ride those same buses to Independence High School.

Q. What about those students who are presently in the East Mecklenburg district and will remain in the East Mecklenburg district? A. All right. As you can see, the present East area runs from this point right here back to the school at this point right here.

Q. And the end of the county line. A. And to the end of the county line bordering South Mecklenburg and Independence. Now, from this area that has been added . . . and the youngsters from the north side are presently being transported out here. Now, in estimating or in our computation of the number of buses needed, none of the children . . . let me check before I say none. There are presently in the East Mecklenburg area that live in a rezoned area would continue transportation wherever they're going, but we're interested, I gather, in the 465 children that have been rezoned into East Mecklenburg. Based on our buses that are now operating out of this area, it would require

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the 11 new buses to handle the youngsters that have been rezoned into it.

Q. Mr. Morgan, did you consider in arriving at that estimate utilizing these same buses to pick up these students in the northern part of the school district? [66] A. We can't do it.

Q. Could you tell us why you couldn't? A. Because the loads they are presently making into the schools.

Q. Well, do you know how many buses you have operating the East Mecklenburg area that live in a rezoned area Chambers, but I don't know where. The reason you couldn't tell it from this is because there are other buses serving East that are going to other elementary schools or junior high schools, making other trips, and we cannot utilize those buses for making more trips than they are now making. Our overall record is that our buses are now making 1.8 trips and to add any more trips on to these buses would mean that the drivers would have to make their same trips and add other trips on top of that.

Q. You, in effect, excluded any possibility of the buses now operating transporting students added on the rezoned areas. A. We feel like the ones we are now operating are operating at capacity, making as many trips as we can get out of them.

Q. Even the ones carrying 19 to Cotswold? A. It's making two trips, I believe.

Q. Yes. A. The time element.

Q. It says here that it travels one hour one way and your buses going to East travel one hour and thirty-five minutes. A. Mr. Chambers, let me see what you're getting at. I don't [67] know what you're getting at.

Q. Your bus carrying 19 students to Cotswold travels one hour. A. All right. You're talking about John Marett.

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Q. Yes. A. It's making two trips.

Q. That's correct, and it takes him one hour. A. And it takes him one hour to make those two trips. Now remember this, this is in a very compact area. Cotswold is a very small area.

Q. I understand, but it also says he travels 13.6 miles on the first trip, 23.5 on the second trip and he does both trips in an hour. A. He is traveling 6-3/10 miles. I remember now. This is the total mileage. So that is 6 miles and let's just say 6 and 12, that's 18 miles.

Q. That he travels in one hour. A. That he travels in one hour.

Q. And your estimates in the compacted area for the additional buses is one and a quarter hours for 12 or 13 miles. A. That's correct. And again you'd have to know the area and know what problems they have along the bus route and how many stops they have to make to pick those 19 children up.

Q. I understand. This is the same kind of compact area that you say the buses at the paired school district would be traveling. [68] A. Some of them yes, not all of them.

Q. This bus traveling one hour, the one driven by John Marett, and it makes the two trips and the bus makes three trips at East which you say you couldn't utilize for the additional students travel one hour and thirty-five minutes, is that correct? A. The one transporting the 44 children, the time required to make those two trips. . . .

Q. Three trips. A. Those three trips is an hour and thirty-five minutes.

Q. And that's the one driven by Harry Stegall? A. Yes.

Q. The one driven by George Johnson makes three trips in one hour and thirty-five minutes? A. Yes.

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Q. And the one driven by Hugh McCrory makes three trips and it takes one hour and forty-five minutes. A. But you've got to know the distance on that third trip from Idlewild to East Mecklenburg, Mr. Chambers.

Q. Yes, I understand that, Mr. Morgan. The question that we had is why you could not utilize the buses that you presently have operating in the system to carry the additional students. A. Well, they'd have to make those trips, they make three trips and what you're proposing to do is to add four trips to it and the time schedule is getting them to Idlewild and East [69] Mecklenburg would mean the travel time back from that point all the way back to the beginning point and pick these children up and add a fourth trip to it.

Q. I'm not talking about adding a fourth trip. The bus now operating in the East district would have to make a trip around in the northern area, it does that now, is that correct? A. I don't know where the route is.

Q. You have buses operating in the north. A. We have buses operating in the northwest area.

Q. And is there anything that would prevent him from going further to cover the whole northern area? A. Well, this bus. . . .

Q. On the first trip. A. This bus at Idlewild that you're speaking about, though, look here. Here's East Mecklenburg and here's Idlewild school, see here?

Q. I understand. You're pointing northeast of East Mecklenburg. A. I'm pointing to Idlewild which is just a very short distance. What you're saying is that I could run that same bus back, all the way back to here.

Q. The bus already runs north of East High School and the only question I'm asking is why couldn't it run further north to cover the whole district on the first trip. A. I'd have to examine the routes and know. . . .

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Q. You didn't consider that in deciding that you would need [70] 11 additional buses for East. A. We considered that bus was already making two trips.

Q. You didn't consider the possibility on the first trip of it covering the whole district. A. And we know that it already has 44 students on the first trip.

Q. I understand that the rezoned area will cut off some of those children. You indicated a moment ago that some of the students now attending East will be going to Independence. A. We made our adjustments as we went through this to make sure we were not duplicating buses. I'm trying to say we're going now just to do away with it. All the buses in this area were not necessarily assigned to here.

Q. I understand that but we'd like to know what happened to these students who previously were in the East district and now are going to Independence. Why couldn't the bus that was previously picking them up now cover the added district? A. Well, the children right here that had transportation to East that are now assigned to Garinger. You can't isolate just one situation, you've got to take what happened to these children in here. The bus you are speaking about could very easily have been utilized to haul these children in this direction here.

Q. Was it utilized to carry them to Garinger? A. Yes. We took every one of the areas.

[71] Q. When you cut off the area previously in East and added it to Independence, how many buses did East lose? A. I'd have to go back. . . .

Q. Don't you have some records on that? A. No, sir, I don't. I don't know what we did. We've worked up so many figures and so many different times that I don't— As we went through it, we made our calculations to make sure we were not.

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Q. Are you telling the Court you do not know how many buses you would be assigning to Independence? A. Yes, we know. I'd have to go back through the records.

Q. Can you show us the records now? A. No, sir, I'd have to go back.

Q. We'd like to see them, Mr. Morgan. A. I'd be glad to do that.

Q. Can we stop now and do it? A. I don't know whether I can dig them up at the moment or not.

Q. Do you know how many additional buses Garinger will require, if any? I'm talking about the rezoning and cutting off part of the East district. A. No because we tried to utilize those buses and make those calculations as we went along.

Q. Can you show us how you utilized them? A. I can get the men in here who worked with me on it and we did them one by one because I had computations made by more than [72] one person rather than just me, isolating them out. We had two people working on the map and two over here taking it down.

Q. We'd like to examine whoever would know. You have submitted an affidavit saying you will need these additional buses and we'd like to find out. A. I'm also stating on my honesty that we worked out to utilize what buses we presently have in operation.

Q. We'd like to see the figures, Mr. Morgan. We'd like to know how many of those buses presently in operation are going to be used. Could you show us one example where you utilized an existing bus? A. (No answer.)

Q. Mr. Morgan, let me call to your attention also that under the Court directed plan East Mecklenburg would have 2147 students assigned to it. There are presently 2140 students assigned to East Mecklenburg. The school is ac-

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quiring only 7 more students and we'd like to know, if you could tell us, why you're going to need 11 more buses to carry the 7 more students. A. Repeat that question for me, please, sir.

Q. Read it back.

(The Court Reporter reads the question on Line 14 above.)

Mr. Horack: May we go off the record just a moment?

[73] Mr. Chambers: Yes.

(Off the record by consent at this time.)

A. Mr. Chambers, in the rezoning the Court order instructed, as was interpreted to me, that all children that were rezoned into a school and lived more than a mile and a half from that school would be eligible for transportation. Is that correct?

Q. Yes, sir. A. 465 children in the inner city . . .

Q. Let me say only that my interpretation of the order is slightly different, but go ahead. A. Well, the number of children that we list here to provide additional transportation for live inside the pre-'57 city limits and therefore have never had transportation. Those children were all shifted to East. So apparently to balance that off, the youngsters who were at East Mecklenburg were shifted to other areas so that explains why East Mecklenburg would have the same number of children but to promote integration we brought these 465 children here out to East Mecklenburg who had never had transportation before.

Q. Mr. Morgan, your affidavit submitted to the Court shows that you have only 25 students living within the

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radius of a mile and a half of East which means that presently you are transporting over 2115 students to East Mecklenburg. A. All right. It means that there are that many children [74] eligible for transportation to East Mecklenburg now. To help you understand it, let me show you the whole picture. Those children who were taken out of East Mecklenburg and were entitled to transportation, we utilized those buses that were being used to East Mecklenburg to transport those children to the schools to which they were assigned and I used as an example East Mecklenburg to here. Now, you want to know where I got Garinger, the additional students for Garinger. The Garinger area was extended all the way almost to West Charlotte. None of these children in here—see, here's the pre-'57 city limits line—none of these children in here have ever had transportation. All of those have been rezoned to the Garinger area so we must provide them transportation.

Q. Mr. Morgan, the only thing you're doing is just shifting some students from one school to another and you indicated you were going to utilize some of the buses from East in transporting students to Independence. Now, how many buses are you going to utilize that are presently in existence for transporting students to Independence that were previously assigned to East? A. This is what I'm saying, I'd have to go back and count the grids and these buses in here.

Q. Would you stay at the map a moment and let me call to your attention that at Independence you presently have 1212 students assigned and you assign under the Court order 1481. [75] Does that tell you anything about the number of additional buses that you will need? A. Now you're beginning to tie the whole picture together. See where the Independence new line comes? Now you begin to get the whole picture. Right here is the Independence line.

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Q. You're pointing north of Independence? A. I'm pointing north of Independence. Now, as you can see, these children have been transported to Independence. These will now be transported from right here on the county line all the way across the county to center city, West Charlotte.

Q. Those children are already being transported. A. Now, those children that are in here are already being transported and they will be provided transportation there and that's what happens to the children at Independence.

Q. What buses are going to go from East to Independence? A. The buses that we presently have in here, we took these grids down and estimated how many children would be in there and we applied the same principle to them going over here as we had previously done.

Q. Mr. Morgan, who helped you determine the number of buses or how you would utilize the buses in existence? A. To do this, I had a total of 11 people in here. We worked 675 hours on this to get the figures and to make sure we had them right and doublechecking them.

Q. Is there anybody on your staff or who assisted you who can [76] tell us now how many buses previously assigned to East will be assigned to Independence? A. Yes. I'll have to go back and dig this out again and bring these people in here to help me do the counting and all to show you where we did it. But I can assure you it's there.

Q. We would like to see it, Mr. Morgan. A. You see what happened to the children, Mr. Chambers, when you began to question me about the balance of children?

Q. No, I can't. The problem that I have, I don't see your utilization of the buses already in existence. A. Well, it's just because I don't show it on the chart. The Court didn't call for me to give the number of buses we were using over there and, therefore, not calling for that information, I

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didn't keep a record. I kept a record only of the Court ordered information and that's why I'm saying I'll have to go back and recalculate now. I'm stating something again that we figured the utilization of them at that time to make sure we were not having buses standing idle. Now I'll have to go back and figure that because I didn't keep records. I didn't know I would be called upon to present that information. But I can explain to you what happened to the children and how we utilized the buses and can show you where all of these children have been assigned, for example, to West Charlotte.

Q. Let me ask you this, Mr. Morgan. You indicated a moment ago that you had not devised any new bus routes under the Court [77] ordered plan. A. No, and the actual route descriptions cannot be made until the children are assigned, the principal pinpoints where they live and runs his bus along those routes.

Q. How can you testify now that you're utilizing those buses when you don't know where they're going to run? A. We knew how many children were in this area. Look at West Charlotte just a minute. To show you how we utilized our buses, we said at West Charlotte that there were 1409 children in the rezoned area for West Charlotte. To show you how we utilized our buses, we said that 1135 of them are now being transported and thereby we did not add any buses to it but we utilized those same buses that transport the 1135 children to transport them all to West Charlotte. Now, we did this, we took West Charlotte and we applied that same principle of the measurement that I showed you to West Charlotte and we took all outside of this area, who did not presently have transportation but lived more than a mile and a half from the school, and we came up for the West Charlotte area that we would have 219 more.

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So we're saying that we'll only have to transport 219 additional children to West Charlotte. What I'm trying to demonstrate is that we did utilize those buses and we took them out of the numbers.

Q. How many buses do you have assigned to West Charlotte? A. Again, that information was not asked for and we took the [78] ones that would be going and added five buses to West Charlotte to transport those youngsters.

OVERNIGHT RECESS

Friday, March 20, 1970:—

Q. Mr. Morgan, yesterday when you were talking about how you utilized the present buses in the system you made reference to your chart that you submitted in your affidavit to the fact that in your column talking about students now transported and additional students to transport, I call your attention to that chart. Start on East Mecklenburg.

A. All right. Let's see, Mr. Chambers, which—

Q. This is the chart showing the children living in different zones under the order directed by the Court. Your second column there shows the students living in the new zone who are now being transported. Would you tell the Court how many you say at East Mecklenburg, for instance, 4 students are now being transported. How many of your existing buses are being utilized to transport these four students? A. I do not know.

Q. You say for Garinger that 365 are now being transported, in the new zones. How many of your existing buses are being used to transport these students? A. I don't have those figures. I guess we could go back through the monthly reports and pull out the number of buses that are being used to transport those children.

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[79] Q. The thing we were interested in, you indicated some buses were being shifted to other schools, etc., and you advised the Court that you won't need bus transportation for these students because they are now being transported. We'd like to know how many of your buses are being utilized or will be utilized under the plan directed by the Court to transport these students. A. Well, those that are now being transported that live in a rezoned area will be utilized out of the present fleet of buses we now have.

Q. I understand that but we'd like to know how many buses you are saying you will need to transport these 365 to Garinger. A. That live in a rezoned area to Garinger—

Q. Could you just give us a number? A. No, sir, I couldn't.

Q. You can't give us a number of any of these schools? A. No, sir, I can't. For the record, Mr. Chambers, I don't know whether toward the end of the meeting that I became confused over your question or not as to the number of buses running by areas and I'd like to clarify if I did misunderstand and if I told you wrong I want to correct it. I was using total numbers of children off this report that are now transported.

Mr. Horack: Are you trying to get back to the same map?

[80] A. Yes. At the close of the meeting I was attempting to show and I'm afraid as I got to thinking about it last night and reworking the way I was telling the Court was that the total number of children that had been shifted from the East Mecklenburg area to the Independence area, we would utilize the same buses. Now, I do not know, Mr. Chambers, how many buses are in there. I stated that as

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we went through it we computed. I think this is where I was getting off track. All we said was that if we are now transporting the 23,000 children on the total number of buses we are now using that those buses would be utilized not in this area, from East Mecklenburg to Independence, from the Independence area to West Charlotte, from the East Mecklenburg area to Garinger, and so forth. Now, to tell you the exact number of buses in this area, I could not because—

Q. Mr. Morgan, you also couldn't say whether those buses in the Independence area, for instance, already being used or those you propose to assign could not also be used to transport the additional students that are now being added to that district. A. Well, the buses that we are now utilizing in Independence, in refining it through the year, we are utilizing the total number of buses it takes to transport them to Independence. Therefore, I could not assume that any more would be available from Independence to come pick up additional children [81] without adding more trips to those buses now being used.

Q. But your number of students at Independence will remain basically the same. A. Yes.

Q. Why will additional buses be needed if you're going to have the same number of students? A. It could be that additional buses will be needed here because I do not know this yet until the principal actually runs the route in there. I could not tell you for this reason, Idlewild School is located close to Independence—I mean close to East Mecklenburg. If it is located close to East Mecklenburg, then on the second run that it makes to the elementary school the driver has time to meet his second period class at East. He may not have time to meet his class and get back to Independence which may be five times as far away. It would put him 10 or 15 minutes late to his class.

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Q. But you don't know that. A. We will not know it until the principals actually run it but I can assume that it will take more buses to serve this area because of the rezoning for it as well as anyone can assume it will take less buses.

Q. Would you tell the Court what factors you are using to assume more buses? A. The fact that I am saying that a bus that now brings the second load to Idlewild Elementary School and then comes on [82] to East Mecklenburg.

Q. You told me that— A. I'm saying where it may take more buses. The bus that now runs its first load into East Mecklenburg runs a second load and comes into Idlewild. When the bus driver unloads the children at Idlewild he is real close to East Mecklenburg and can get over there in a very short period of time to meet the second period class. I'm saying now, then, in reorganizing this and when the principal gets down to it, when they make the first load into Independence and the bus has to come back in there and make a load into Idlewild, that driver may not have time to get all the way around back to Independence as he would to get to East Mecklenburg. It could make him, I don't know, 10, 15 minutes late or more for his class there and, therefore, we wouldn't have a driver.

Q. Would you state, Mr. Morgan, whether that driver now going to East is making two or three trips? A. As demonstrated there, if you want to count the third trip, the trip where he hauls student drivers only.

Q. Do you call it a third trip in the principal's monthly report? A. You have to account for it some way and they have been using this for the entire state. They have no way of showing another trip.

Q. Is it accounted for as a third trip? A. It has to be

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on their reports but we don't count it as a [82] third trip where he's only hauling drivers.

Q. It's a third trip according to the report you filed with the state. A. Yes and the state can't adopt a special form for us here in Charlotte-Mecklenburg.

Q. You call it a second trip going to McClintock after he drops the children off at East, is that correct? A. Yes. He drops the children off at East and makes another trip, a second trip to McClintock.

Q. Isn't it possible that instead of the bus going now directly to East for the first trip that the bus will be routed to McClintock and then to Independence? A. All right. It could be routed then to Independence and then he has to get back to East Mecklenburg.

Q. The students are assigned to Independence, that's what you were telling us. A. Yes, but the driver may not be assigned to Independence. If you're talking about the driver living as close to the school as possible—

Q. You don't know where the driver lives. A. No, but we would try to find one as close to the school as possible.

Q. And that's the extent that you have considered the buses now in use for transporting the students in a new attendance zone, what you have just described. [84] A. Yes. Mr. Chambers, just as I told you about the original areas, we won't actually know because this is going to change the whole bus-routing system throughout for our existing fleet as well as the new fleet. This is the entire thing that has to be done.

Q. Mr. Morgan, I understand that there are presently 5000 students transported by City Coach Line in the city to and from school each day. A. I believe that was a statement made by Mr. Deaton.

Q. Do you know how many of these students will now be

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riding school buses rather than city coaches? A. No, I do not.

Q. And you don't know what effect the relief from the 5000 who might be assigned to school buses will have on the system either? A. Repeat that for me.

(The Court Reporter reads the question on Line 13 above.)

Mr. Horack: Repeat that again for me.

(The Court Reporter reads the question on Line 13 above.)

Mr. Horack: Which system are you talking about?

Mr. Chambers: City buses.

A. Free transportation provided for youngsters—I do not know how many of them would discontinue riding a city bus but under the order, whereby no children will be provided additional transportation in the existing areas, a great many [85] of those are now served by the city buses.

Q. I thought you testified yesterday that you don't know exactly where those students lived who rode city buses.

A. I say I do not, but we know this when I say I don't know, I don't know the exact location, we know in the attendance area of that school. Myers Park, for example, we know out of the present Myers Park area that so many are served now with city buses. Many of them are within a mile of the school. I see those buses stopping and getting children less than a mile from Myers Park.

Q. Just as an example, what would prevent the City Bus Lines from providing service for all the students in the Myers Park area? A. If they have that capability.

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Q. Well, if you are now providing public transportation for some of them, wouldn't it relieve some of the 5000 now riding the city buses? A. I don't know that it would because many of those are less than a mile and a half from the school now, riding on the buses.

Q. There's nothing that would prevent them from continuing, is there? A. Those less than a mile and a half, they have no transportation one way or the other.

Q. Doesn't the city bus operate in the northern part of the Myers Park district? [86] A. I don't know where their buses run.

Q. That's in the city, isn't it? A. That's right.

Q. Doesn't the city bus operate in the northern part of the Garinger School district? A. See, right here is where the Myers Park line cuts off. They have no buses in this area now serving the Myers Park children and we did not include any of these children presently being served by those same buses, we didn't include them in this.

Q. I understand, but the city bus line operates in the northern area of the rezoned Garinger district, they operate in the northern area of the Myers Park High School district, do they not? A. I would assume they do.

Q. And some students now living in the northern area of the Myers Park district have opted freedom of choice to go to the Myers Park School when you closed Second Ward High School. A. You say they did?

Q. I'm asking if you know that to be true. A. No, I don't.

Q. Well, you didn't consider that factor, either, in determining the number of additional buses that would be needed. A. I considered only the number of children in the rezoned area that would be additional children.

[87] Q. Would you state for the record whether you considered the City Coach Lines transportation as a pos-

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sibility for reducing the number of buses that would be needed? A. By contract transportation?

Q. By any kind of transportation. A. Yes, we approached the coach company.

Q. I'm talking about, Mr. Morgan, in determining whether the City Coach will provide all the transportation that would be necessary for the Myers Park High School, did you or did you not consider that? A. I don't know.

Q. And you didn't consider whether City Coach Lines would provide some of the transportation in the Garinger High School district. A. No, I had no instructions to.

Q. You didn't consider whether the City Coach Company could provide some of the transportation for the students now in the West Charlotte High School district, the rezoned district? A. No.

Q. Do you know this area here, Mr. Morgan, the area north of 85 commonly referred to as Northwood Estates area? A. Just off Beattys Ford Road?

Q. Just off Beattys Ford Road. A. Yes.

Q. Do you know that those students are now being transported to [88] North High School? A. Yes.

Q. Did you consider the reduction in the number of students who would be now assigned to West Charlotte and less than a mile and a half from West Charlotte? A. Yes, because that's the total number of the children in the rezoned area for West Charlotte.

Q. Did you consider their reduction in the number of students who would be required transportation? A. Yes.

Q. Will you show us where you considered it? A. Mr. Chambers, as far as these youngsters are concerned here from North Mecklenburg, there are a number of children not just in the Northwood Estates here but in this entire area north of Interstate 85 to the new rezoned line. All

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of these children were assigned in here and we said there. . . .

Q. Assigned to West Charlotte? A. Assigned to West Charlotte. We're saying that there are 1135 of them who are being transported there.

Q. Who are being transported to West Charlotte? A. Who are being transported to North Mecklenburg. See, all of these children here in Northwood Estates and all of this entire area all the way out here to Interstate 85, all those north of Interstate 85, all these are being transported now to North Mecklenburg and our count gave us a total of 55 who [89] would live in the area that is within a mile and a half of the rezoned West Charlotte area who would not be transported. Now, that's in the rezoned area only, we had 55 children.

Q. Are you saying there are only 55 children from Northwood Estates who will not be provided transportation?

A. In the West Charlotte area.

Q. That's your estimate of the total number of children in that area? A. Yes. Or it could be not in the Northwood Estates alone, Mr. Chambers, but it's all within a mile and a half of this school. Some of them could be over in this area here.

Q. You're pointing to an area east of Beattys Ford road? A. Yes, sir.

Q. That's the only reduction in the number of students being transported to North who now would be assigned to West Charlotte that you counted? A. That's right, yes, sir.

Q. Going again to your estimate of the number of buses required, as I understand what you're testifying to about your determination of the number of buses, you would take a 54-passenger bus and assign only 40 students to it

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and you then divided it into the number of students you estimate would need additional transportation. A. Yes, sir. And, Mr. Chambers, in addition to that, you called my attention to something that I went back last night and [90] reviewed. Out of the first five months reports you had picked out only one situation, bus #17, and. . . .

Q. I thought we talked about three or four buses. A. We did but I was using 17 as one in particular that you talked to me quite a bit about which showed on the fourth month report 58 children on the first trip which went to East Mecklenburg. So I went back and looked at each one of these and I found that bus 17 the first month of school transported only 32, the next month 33, then the next month 58, which indicated to me that something was going on in the way of increase in enrollment or something that brought about an overload on that bus. So I looked back and then I came on to the fifth month, which was not available at the time I submitted this to the Court, which I went back and got also and indicated that same bus is transporting for the fifth month 36 and for the sixth month 36.

Q. 36 high school students? A. Yes, sir.

Q. Did you check, Mr. Morgan, the other buses transporting students to East Mecklenburg?

Mr. Horack: Let him finish whatever comments he wishes to make on this.

A. I was simply pointing out that Mr. Chambers had picked out just one month here where the average number of youngsters transported daily was 58, whereas if you looked at the entire [91] picture you get a different picture. If this bus had an overload, then we came back and made

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adjustments to that bus in the fifth month and the sixth month where only 36 were riding in it.

Q. Let's look at bus #12. A. I did the same thing for bus #12. The first month it had 51, the next month it had 48.

Q. What month is this? A. This is the first month.

Mr. Horack: May I ask that we identify, Mr. Morgan, you're referring to the first, second, third, fourth, fifth and sixth months. Identify those by calendar, months and years, please.

A. These are principals' monthly bus reports.

Mr. Horack: What month for what year?

A. For the current school year, 69-70 school year.

Mr. Horack: The first month being what, September?

A. September 2 to October 1. During that month bus #12 transported 51; the second month adjustments were made to where it transported 48; the third month it was adjusted to where it transported 46; the fourth month 44; the fifth month 41 and the sixth month 41. So we are constantly, as this county changes and enrollment grows, we are trying to balance our buses and you can pick out any month and maybe find a bus loaded beyond what we would say is desirable to have on a bus. [92] We are constantly working to reduce this all the way through.

Q. Look at the same page, Mr. Morgan, for the bus driven by Chris Nelson. A. That's the one for Randolph Junior High School.

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Q. Would you read that out for us? A. All right. Now bus #37, which is a bus that serves Randolph Junior High School. These are junior high school youngsters and this is where I indicated on the form that we use that we will put more junior high school children on a bus than we will on elementary.

Q. And along with that same explanation, did you increase the number in determining the number of buses you would need for elementary and junior high schools? A. Yes, sir.

Q. What number do you use for elementary? A. We worked out a formula to use the same formula all the way through senior high school 40, and we said number of students 54 to 58.

Q. What do you mean by that? A. In other words, on a 54 capacity bus, which is a 67 maximum, we stated from 54 to 58 one bus. In other words, it would take one bus utilizing 54 to 58 children.

Q. Why did you divide 40 into the numbers? A. That was for senior high schools.

Q. What are you using that for now? [93] A. This is elementary and junior high school. They are smaller children and more children can get on a seat.

Q. Instead of 40 for the junior high schools you used 54? A. 54 to 58 for one bus. We worked out how many buses it would take if you had that many children. Two buses would transport 108 to 116. I did this on a chart form so I could look when we were computing this up, that we could look over on the report and see school by school the number of children you can put on a bus. And then we looked at the number of children in the rezoned area assigned to these schools and applied this formula against it to arrive at the number of buses.

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Q. All right. Now, would you read the number of students transported on the bus we are talking about? A. All right. On bus #37 there were 68 on the first trip, 52 on the second trip.

Q. How many on the third trip? A. The third trip, which was to carry drivers only, to get them from the school where they stopped to the senior high school, 3 children. So that means that there were three drivers from two other buses that must have stayed at Randolph that got on there to ride on that bus to East Mecklenburg. The second month there were 76 and 75. Now, this tells you something because it must be a rapidly growing area where the children had increased. The third month there were 75 [94] and 68. On the fourth month there were 63 and 59; on the fifth month there were 70 and 63; and on the sixth month there were 67 and 59. So as they fluctuate and we try to adjust and utilize buses in an area, we try to balance the loads off. Of course, we are not always able to do that. Because we're transporting this number, Mr. Chambers, I'm not saying that makes it right. It's a necessity that we have to live with because we don't have money to buy more buses to put on to relieve the loads.

Q. Now, you were talking about high school. I'll show you the principal's monthly report for Garinger High School for December 1, 1969, to January 9, 1970, the bus driven by Jessie Tennent transported 53 children to Garinger Senior High School, is that correct? A. Yes.

Q. The bus driven by George Mahatha transports 30 children to Garinger High School on the first trip, is that correct? A. That's correct.

Q. The bus driven by Frank Wallace transports 51 students to Garinger High School and the bus driven by Jerry

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Dahl transports 56 students to Garinger High School, is that correct? A. That's correct.

Q. The bus driven by Joe Thompson transported 62 students to . . . 61 to Hidden Valley and 30 to Garinger High School. A. Yes.

[95] Q. The bus driven by Dean . . . well, another bus transports 65 students to Garinger and 38 on a second trip to Garinger, is that correct? A. Yes. Now, Mr. Chambers, to do that I'd need to get every monthly report and put it out in front of me and look and see what's happened for the first month and the second month. I selected one month here. It may have been a growing area, there may have been changes in it. I just can't pull out one month.

Q. All of the bus reports that you have given us are of record and are before the Court. A. Yes, sir.

Q. Now, for these additional buses you also have a column here about the parking areas and you say that in many instances you need to make some additional parking facilities for the buses. Do you anticipate under your estimate that each of these buses will go on one trip to the one school with the number of students indicated and will park there all day? A. We state that there will have to be space for them to pull into that school and unload whether they stay there or not. We still have to have unloading space and a safe way to unload the children whether they stay at that particular school or not.

Q. Well, I understand that you are transporting 760 some black students from the inner-city now out to some white schools. [96] What additional space did you provide for at those schools, the black schools from which the students are being transported? A. At some of the schools we already had spaces available for them. At Sharon, for example.

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Q. I'm talking about the schools from which these children are being transported. Oaklawn Avenue is one example, you're transporting some students from that area. Did you provide any additional spaces at that school? I'm talking about for the 764 black students you are now transporting out to white schools. A. At Oaklawn we said that the number of buses required there would be 9 and we would have to have space available to park the buses.

Q. Are you presently transporting 764 black students from the city to the white schools? A. Scattered out to various areas, yes.

Q. Didn't you testify earlier that Oaklawn Avenue was one of the streets that you traveled and isn't it a fact that some of the black students being transported now come from the Oaklawn School? A. Oaklawn . . . unless they exercised freedom of choice to go from majority to minority situation, Mr. Chambers, they were not supposed to be going from Oaklawn School.

Q. Did you close Fairview School at the end of the 68-69 school [1971] year? A. Yes.

Q. Do you know where the Fairview attendance area was? A. I could locate it on the map.

Q. Do you know where the black students who constituted the 764 students going into white schools now reside? A. I know the attendance area in which they reside.

Q. What attendance areas? A. Well, Fairview, Bethune, Isabella Wyche, Zeb Vance, Alexander Street, elementary children.

Q. What about the 73 students who were in overcrowded black schools? A. If they exercised a freedom of choice to go.

Q. I thought you reported to the Court they had exercised a freedom of choice. A. I don't know how many of

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them did. Now, let me say about this, these schools have been closed. Now, we're doing something there we have been talking about differently from these other schools. We're talking about all walking in to a point to be picked up. We're running the bus through the area and picking them up at key points along the way and making that a route as we would for any bus.

Q. Did you make any additional ground preparations?

A. The schools were closed and we ran the buses through the neighborhoods not to do that.

[98] Q. Would you explain how you arrived at an additional 7000 parking areas space for Garinger High School?

A. Well, at Garinger Senior High School we are presently parking them in drives and so forth, which is not what we want and we have not had the money to go to Garinger and develop a bus parking lot for these buses.

Q. You're presently not parking them in areas that you tell the Court you need for the new buses? A. We don't have the space prepared for it and we have to park them in the streets and what not. As money is available we will provide spaces. If I get money to do it with, I'll do it.

Q. Are you telling the Court that you are presently parking these buses on the sidewalk and now you tell the Court for the additional buses you've got to have some parking areas? A. We park them on the drives, not the sidewalks.

Q. You can't park these 11 additional buses you estimate you need for Garinger the same way? A. I don't think so.

Q. Why can't you? A. Because we already have a number of buses there already and to add 11 more to the fleet—

Q. How much space do you have there now? A. The survey that was made, we actually do not have a bus parking lot there now, but we need one and it's been [99] recommended we put one there, and haven't had the money to do it.

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Q. I understand that but I would like to know, if you can tell us, how much space you've got there now. A. Land is available to convert it to space but we have—

Q. Mr. Morgan, do you understand the question? Could you tell us how much space you have there now that you're utilizing for parking? A. We're utilizing the drives, and so forth, to park them in.

Q. You're saying you're utilizing all of the drives, is that what you're saying? A. No, we're utilizing the back drives. The front drives, where it was necessary for traffic, student traffic, we keep the buses separated from the student traffic altogether.

Q. How much of the back drives were you using? A. How much of it? I'd have to go out and actually see.

Q. You made this report without being able to tell the Court presently how much you have. A. I made it on the basis of the additional buses we would have there.

Q. Would you tell the Court why you would need 5400 additional spaces at Myers Park High School?

Mr. Horack: Excuse me, Mr. Chambers, you're reading from that last column. Those are dollars not spaces, are they not?

[100] Mr. Chambers: I don't know.

A. That's dollars. It would take \$5,400.00.

Q. Would you tell the Court what you have to do there to spend that amount of money? A. We would have to develop a bus parking lot.

Q. Do you have a bus parking lot at Myers Park now? A. We do not have a bus parking lot now. They utilize the drives around the gymnasium and all at the present

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time and that's utilized for city bus transportation which we estimate that will still have to be continued because of the area we have not provided transportation. They'll still come in there by city bus transportation which by necessity will have to be continued since the children in the present Myers Park attendance area that's left in the area will continue utilizing city transportation because no other transportation is provided for them.

Q. Do you have school buses at Myers Park now? A. I believe we have.

Q. And they park in the driveway? A. Yes, sir.

Q. But these new buses can't park in the driveway? A. There are just so many you can park in the driveway.

Q. Can you tell the Court how much parking space you have in the driveway now at Myers Park High School? A. Well, we have the area from the back of the auditorium to the [101] gymnasium where all the city buses line up in the afternoon to pick up the children. I have observed those buses along the streets.

Q. Can you tell the Court how much space you have now at Myers Park that you presently utilize for parking buses? A. We estimate that this is for seven additional buses there.

Q. But you aren't talking about the same type of parking space for these additional buses. A. No, sir. We're talking about a safe way of parking them and not just parking them on the streets.

Q. You can't tell the Court how much parking space you now have at Myers Park that you utilize for parking. A. Only that area I described.

Q. Do you know the square footage? A. No, sir, I don't.

Q. Can you tell the Court why you say you would need

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to spend \$6,600.00 at South Mecklenburg High School?

A. Yes, sir, because the present area we have will not take care of it and you have to expand the present bus parking lot.

Q. Do you have a bus parking lot now? A. Yes, sir.

Q. Do you know how much square footage you have there? A. I can get it off the plans in here. We have it.

Q. May we see it? [102] A. Yes, sir. (The witness leaves the hearing room and returns.) Here is the plot plan of the school and to give you the square footage I will have to measure it off.

Q. Can we make a copy of that, Mr. Morgan? A. Yes, sir. I think I can get a copy of it, I'm sure I can. Would you like it?

Q. Yes, please. We'd like to get a copy. A. This demonstrates, Mr. Chambers, to you how we feel that it's necessary for the safety of children to arrange bus parking areas separate from all other traffic. For the safety of children, to load and unload and service the buses and parking the buses, this demonstrates what we try to do. And I say again we don't have any space like this that we say is safe for children to, for buses to park and it's a desirable way and a safe way and I'm saying that we've got to expand South Mecklenburg. You can see right here that we have an area where this parking lot will have to be expanded to take care of it.

Q. Mr. Morgan, according to the plan directed by the Court, South Mecklenburg will have 2247 students, is that correct? A. That's correct.

Q. And it presently has 2114, is that correct? A. Yes.

Q. According to the affidavit that you filed with the Court only five students live within a mile and a half of South [103] Mecklenburg. This is the affidavit you filed with the

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Court showing the students within a mile and a half and students living within two miles. A. That came off of a different exhibit, didn't it?

Q. Yes, sir, that's the exhibit you filed on March 13. A. That's right, I remember it. South Mecklenburg indicates that five children live within . . .

Q. According to your testimony all students living within a mile and a half or beyond a mile and a half of South Mecklenburg are presently provided transportation. A. Transportation is available for them.

Q. Now, would you explain why you're going to need so many more buses at South Mecklenburg when you are already transporting about all the students in there? A. Mr. Chambers, we are not transporting all of those children now. Many of them drive their own cars to school.

Q. Will they stop driving with the new arrangement? A. We do not anticipate them stopping. They haven't exercised it heretofore and we don't have a reason to believe they'll change their pattern.

Q. Do you anticipate you're going to need that many more buses out of the rezoned area? A. Yes.

Q. You do? A. Yes, sir. May I explain why?

[104] Q. Yes, if you don't mind. A. We have found that in areas that the income of the parents is not as great, they exercise the right to ride a bus more than those who live in a more affluent area. And so we estimate from that based on the experience of those who utilize it when it's provided in an area like that that the children assigned to South Mecklenburg from this inner-city area will most certainly utilize transportation. This comes from the principal of the former Second Ward School and . . .

Q. I'm looking at the map, Mr. Morgan, and it seems like the present attendance area is just about the same thing as

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what the new zoned area will be. A. The South Mecklenburg area comes, as you can see, and stops off at this point here and you're adding all of this.

Q. You're adding . . . A. All of this to it.

Q. Well, let's specify for the Court. You're adding 342 grid C and D, 343 grid C and D, 369 grids A and B, 368A and a part of B, 367 B and C and D. A. That's right, you're correct. It comes on up here.

Q. A part of D? A. All of D.

Q. Part of D is already included. A. Yes, part of D is already included.

Q. Well, do you know how many buses you presently have at South? [105] A. We'd have to look on the report or I can call the Transportation and ask him how many buses.

Mr. Horack: Mr. Chambers, isn't this the same line of questioning which Mr. Morgan has already answered and explained in the example that involved East Mecklenburg and Independence?

Mr. Chambers: No, it isn't, Mr. Horack. We're talking about Mr. Morgan's estimate of the additional parking space.

Q. Mr. Morgan, I show you a copy of the principals' monthly report for a period December 1, 1969, to January 9, 1970, and ask you if it does not show the buses serving South. A. Well, it shows not only those serving South but other schools around South.

Q. Is it prepared by the principal of South Mecklenburg? A. That's correct but, Mr. Chambers, there's another factor that enters into this. As the buses come in, they may come in and not necessarily terminate at South Mecklenburg and stay there. They may go on to another school

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and they'll have to unload the children there and space has to be provided for them to unload.

Q. Mr. Morgan, I thought you testified earlier that the buses that stay at the school are accounted for by the principal of the school and that's why we have the report from South Mecklenburg. [106] A. Yes, that's right, he accounts for the ones that stay there but I'm saying he is not accounting for those that pass through.

Q. If he accounts for those that stay there, he would show those that are there that require parking space. A. Yes, but what he would not show would be the number that he must provide a space for to unload and go on for another trip.

Q. Well, if there is any other bus that passes South Mecklenburg to unload or pick up students, they would be shown in the principal's monthly reports, would they not? A. They would show, that's correct, in the reports. That's right.

Q. And you have given us copies of these monthly reports which we have introduced as exhibits. A. Yes, sir.

Q. Turning to your exhibit about the cost . . .

Mr. Horack: What page is that?

Mr. Chambers: It's not a page. It's the Court Ordered Plan, Charlotte-Mecklenburg Schools, Senior High Schools, showing capital outlay, cost operation, personnel.

Q. Do you have that? A. Yes, sir.

Q. Under capital outlay you've got 69 buses which you estimate you will need. Are these 54-passenger buses you're talking [107] about? A. Yes, sir.

Q. And you estimate a cost of \$5,387.64 each. A. Mr. Chambers, this was the contract price this past year. As I

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indicated in previous testimony that the bids that have come in to units in the State of South Carolina and Georgia, they have been averaging \$400.00 more per bus than this, but I could not testify that will cost us that until the new contracts come in.

Q. Do you know that the State Board of Education has already received bids for the next school year? A. It was my understanding they were going to take bids on the 27th of March. That was the information I had from the Division of Purchase and Contracts in previous correspondence. Have they received them?

Q. Well, I can't . . . A. Excuse me, I thought maybe you knew something I don't know.

Mr. Horack: Let's swear Mr. Chambers.

Q. Under column B you have equipment \$1,750.00. Would you explain what that is? A. The equipment needed is a variety of the different types of equipment that was estimated that would be needed to service these buses such as air compressors, small tools, grease guns, and the like of that that we would need this additional equipment for servicing the buses.

[108] Q. You don't already have such equipment? A. We have equipment but it's used to capacity now.

Q. Now, how did you estimate the cost of \$1,750.00? A. It was run through at the present cost of each of these items.

Q. Do you have any record of what you did to make that computation? A. I don't have it with me. I'd have to go back and dig out where and how we figured that out.

Q. You estimate you need three additional service trucks. How did you arrive at that? A. To service the number of

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buses that will be on the road. We'd have to have the formula we currently use.

Q. What is that formula? A. I believe it is that one service truck will service, I believe it will service 20 to 25 buses. I'm giving you a range here of between 20 and 25.

Q. Is that the state formula? A. That's the formula we found we need here in our system.

Q. For 20 to 25 you need one? A. Yes, sir.

Q. What is the state formula? A. I don't know that the state has a formula. You know, it varies from county to county, the complexity of the situation. You know, we have one of the most complex programs in the [109] system here that we have in the state.

Q. I understand. You have a gasoline delivery truck. What's your formula for determining the gas delivery truck? A. We need one truck for a minimum of 69 and when you reach past that, we say when you get over into the 84 then you've got to have more than one for it.

Q. Well, now, could you tell us your formula, whatever it is? I'm talking about determining the senior high school buses. A. Gasoline trucks.

Q. Gasoline trucks, that's right. A. Mr. Chambers, we have stated that it would take, for senior high schools, one truck to service 69 buses.

Q. So your formula is that you need one truck to service 69 buses. A. Well, we have stated that this one would serve it here. What I was trying to get at was that in trying to work this out to show you senior high school by junior high school by elementary school that we said that it may be, when I turned over two gasoline trucks for 84 buses at the junior high schools, then that possibly that that gasoline truck could help pick up some of the load of the senior high schools.

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Q. I would just like to know your formula that you worked with. A. Well, it was based on the number of gasoline trucks that it now takes to serve our present fleet.

Q. How many gasoline trucks do you now have to service? A. I'll have to go back and get that.

[110] Q. Do you have that information available? A. We used it. I'd have to call and get it.

Q. Could you call now and give us the number of gasoline trucks? Also check the service trucks, if you don't mind. A. Is there anything else?

Q. We'd like to know the number of supervisory personnel you have and the number of clerical personnel you have. (The witness leaves the hearing room at this point and returns.)

Q. Are you ready to give us the formula for determining the service trucks? A. Yes, sir. You had asked the present number we now have. We presently have 12 which we were short on servicing our vehicles. We have two on order, have been on order for some time and we're expecting delivery soon. So that will give us 14. Taking this 14 into the approximately 300 buses we are now operating—this is for all programs, the regular school program, Child Development Centers—that . . .

Q. Let me ask you this, Mr. Morgan. How many buses do you regularly use for the regular academic program, not the special programs? A. I believe I said in the report here that the regular program . . . I submitted to the Court.

Q. Wasn't it 280? A. It was 284. I believe that's right.

[111] Q. OK. A. But on this formula here of service trucks, 14 into the approximately 300 buses would give one

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service truck for each 21 buses, and I testified that our formula ran somewhere 1 for 20 to 25 buses. So currently we are using 1 for each 21 buses. We now have five gas trucks that are serving the 300. That's 1 per 60. Now, there is one thing, Mr. Chambers, that I think I alluded to this and I don't know whether I made it clear or not. For the purpose of the Court, to separate senior and junior and elementary, we tried to put down figures here, but we do not operate a system for senior high schools and a system for junior high schools and a system for elementary schools. We tie the whole thing together and to get the clear picture of what we did and how we applied what we are presently doing against that, we'll need to take all of them for the entire system because we are a centralized operation. I'll do it any way you want to but it would be better for us, I think, to get the overall picture.

Q. How many gasoline trucks do you presently have?

A. Five.

Q. How many supervisory personnel do you presently have? A. We have three and we're badly understaffed.

Q. You have three? A. Yes.

Q. How many clerical personnel do you presently have?

[112] A. We have four and we are understaffed again.

Q. And the three supervisory personnel are taking care of the 300 buses, or the 284 buses, and your four clerical personnel are taking care of your 284 or 300 buses. A. Yes, sir.

Q. Now, in your cost of operation how did you determine the average daily driver salary? A. This I requested Dr. Cameron, who is the Controller for the system, to figure this out for me, the actual salaries taken, and to give us an average salary of our present operation.

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Q. Well, what factors did he consider in arriving at this average daily salary? A. The average daily salary was taken by taking the total salaries paid to all drivers and getting an average for the present fleet of drivers.

Q. Do you pay drivers by the hour? A. Yes, sir.

Q. Well, let's see now, you have buses that you recommended for the additional transportation required who would be making one trip, is that correct? A. Yes, sir.

Q. And the buses now operating are making two and in some instances three trips? A. Yes, sir.

Q. Well, how did you use your present system to determine the [113] salary for the additional bus transportation? A. By taking the average hourly salary times the estimated number of hours that we said it would take for the fleet to get them there.

Q. Was this estimated number of hours that it would take the fleet to get there your one and a quarter hours and two and a half hours a day? A. Yes, sir.

Q. And you estimated one driver for each bus you told the Court you thought you would need? A. Yes.

Q. Now, how did you arrive at your figure for gasoline and oil and grease, and so forth? A. That came from our current records of operation, taken directly from that, and applied on a mileage basis to this.

Q. Is that 15 mile average one way? A. Yes.

Q. How did you determine your mechanics' salaries? A. We based that on the present salary schedule of the mechanics.

Q. How many mechanics did you estimate you would have? A. Well, again we went back to the number of mechanics that we have presently to operate our fleet on and applied that same formula just as we did to the gasoline trucks and supervisors and so forth, and we also

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did this; we scattered them out according to the number of apprentice mechanics, the number [114] of mechanics 2 and mechanics 1 we would need. We didn't put all top mechanics in here. We put them on the same basis as we have now.

Q. You don't know how many mechanics you now have?
A. I'd have to dig it out from the records.

Q. How did you estimate your repair parts? A. Based on our current figures on parts that it takes. We did not allow for any increase in parts. We are experiencing anywhere from 3 to 6, 7% increase in the cost of parts and tires, and so forth. We did not allow that in there. There are a number of factors, Mr. Chambers, and I feel like my figures are really conservative and will be low because we did not allow for the increase in the cost of these items.

Q. Well, did you allow for the fact that these additional buses are not going to be traveling like the buses you now have in service? A. Yes, we made the allowance for it.

Q. For just making one trip? A. Yes, sir. We based it on a mileage basis.

Q. Who made these computations for you? A. I had several people working with me.

Q. Would you just explain for the record how you allowed for all of these factors in your determination that repairs would run \$16.56 per day? A. This was based on what our current records show that it is [115] costing us to operate our present fleet.

Q. What adjustments did you make to allow for the factors we have been discussing?

Mr. Horack: Would you mind repeating the factors, Mr. Chambers?

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Mr. Chambers: The ones we just discussed, Mr. Horack. Mr. Morgan said he made allowances for all these factors.

A. I didn't make allowances for the rising cost factors.

Q. You made allowances for the fact that the additional buses would be making one trip. A. I said we took it on the mileage basis.

Q. What did you do, determine the cost you average now to run the buses you now have and use that as a daily average? A. Mr. Chambers, look down at tires and tubes. We did not make any allowance for tires and tubes the first year because we said if we get all new buses it will not be necessary to put tires and tubes on them the first year but it is going to be necessary for a certain amount of repairs even though it's a new bus. We experience breakdowns and mechanical failures.

Q. Mr. Morgan, I'm only trying to find out how you determine your average daily repairs. A. Based on our current operation.

Q. Average daily cost for repairs today? A. Yes, sir.

[116] Q. And that is the only factor you considered? A. Yes, sir.

Q. I think you testified that you presently have three supervisors. How did you estimate you would need one supervisor for the high school and three for the junior high schools and five for the elementary schools? A. We based it upon the work load of the present supervisory staff that we now have.

Q. You now have three supervisory personnel servicing the 300 buses? A. We now have three supervisors servicing the 300 buses.

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Q. And you would estimate you would need nine to service the 492 buses? A. Yes, sir. I have requested in my budget each year for an increase in supervisory personnel, that we do not have enough for them; I have requested each year that we need more men, that our buses were badly lacking in mechanical repairs, our fleet is going down for the lack of personnel and if we're going to add this many more to it, our fleet is going to soon get in such a state of repair that I would not want to be responsible for the operation of these buses unless we get adequate people that it will take to do it. We're treading on dangerous ground.

Q. The Board of Education felt that you didn't quite need that many people. [117] A. I don't know. The money wasn't available.

Q. And the Board of County Commissioners didn't appropriate funds for it. A. We didn't get the funds to operate on.

Q. How did you determine you would need five additional clerical personnel? A. Well, we now have four for 300 buses and we came up with five for the additional 400.

Q. What would these clerical personnel do? A. They keep all records of bus reports, of cost, salaries, and all of the regular routine work that goes into running the Transportation Department.

Q. They keep records? A. They keep records, yes, sir.

Q. I notice in your elementary schools you say you need a bus dispatcher and an assistant bus dispatcher. What is a bus dispatcher? A. A bus dispatcher is a person that we must have in order to use these buses as they are being used for more and more activities and to keep up with the fleet of buses that will be operating, in making sure that a bus is sent out if there is a breakdown in a bus and it

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requires a substitute bus somewhere, to get it, or doubling a load or whatever we have to do to get the buses to school. We must have some of these people in order to look after the buses, and to make sure [118] we've got them in the right place, and so on and so forth.

Q. How many bus dispatchers do you have now? A. We don't have any. We're utilizing our three people about 14, 15 hours a day to do this.

Q. You don't have any assistant bus dispatchers then. A. No. I finally got another person added to the staff this year who we refer to as a technical person, really in a coordinating position to handle just nothing . . . we use him for many more things. He was employed to handle the field trips, the special programs that are in effect, the concerts, and so on and so forth, and we are finding his duty eaten up with other things now rather than doing that which we employed him to do.

Q. Like what other things? A. Investigating accidents, check routes, working with drivers to keep enough drivers on hand, training drivers, and things of this type.

Q. Well, who takes care of arranging for the transportation of pupils when buses break down now? A. That's done by the person that is available in the office.

Q. Now, you talk about mechanical supervisors for the elementary schools. How many mechanical supervisors do you have now? A. We have one.

Q. And you estimate you need two? A. Yes, sir.

[119] For the elementary schools? A. Well, again, we pulled it out, Mr. Chambers. I'd have to tie the whole fleet of buses to it. Just for the purposes here we simply put it under elementary and this was just for a system of showing. That's where the largest number of buses are.

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They'd also have to help supervise some of the existing of the ones for junior and senior high schools.

Q. Well, what does the mechanical supervisor do? A. He occupies the same position as when you go into a garage to have your car repaired and you meet the man on the line to tell him what is the trouble and he's the expert who can analyze and take down what is wrong and then direct mechanics to repair that. If they don't know what's wrong, they call upon that person to come help them.

Q. Where is your present mechanical supervisor located?

A. In the bus garage.

Q. How many bus garages do you have? A. One.

Q. Do you anticipate building another one? A. We are needing very badly now to add to our existing plant and we had put money in this past bond issue for the expansion of this facility but we didn't get enough money to do it. We have had to delay it. We have three men, these three supervisors I'm talking about, occupying three desks in a space that's about 12 by 12.

[120] Q. We're talking about mechanical supervisors? A. Well, I was just illustrating to you our need for space and we'd have to also add space to our present plant.

Q. Well, at present you don't have any funds or any plans for building any addition to the garage or building another garage. A. One of two things. We can't continue servicing where we are. We have got to either expand in a satellite operation or in the present facility. Or, Mr. Chambers, I'll say this, if we don't, all I can say is that I'm deeply concerned and I have expressed this before to the school officials, that I'm deeply concerned about continuing our present operation as crowded as we are.

Q. I see. Would your answer be yes or no to the question?

A. That we do not have money to do it with, no, sir.

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Q. You don't have present plans to do it. A. We have plans prepared.

Q. But you haven't any authorization from the Board to do it. A. No, sir.

Mr. Horack: May I make an inquiry? Are we talking about plans with reference to your existing fleet?

Mr. Chambers: Yes.

Mr. Horack: You're talking about the needs of the existing fleet.

[121] A. Yes, sir.

Q. What about your personnel manager, how many personnel managers do you have now? A. None. Just our Director is having to look after all of this.

Q. You don't have any personnel manager now? A. No, sir.

Q. What about the driver training supervisor, how many do you have now? A. Well, the driver training supervisor. This is furnished by the Department of Motor Vehicles.

Q. You have indicated here you have to pay for it. A. I'm saying we need, in addition to what the State furnishes, we've got to have one of our own.

Q. How do you know the State won't furnish this one? A. Personnel Manager?

Q. Driver training supervisor. A. Well, in addition to ... excuse me, I'm off the track there. We need, in addition to what the State furnishes, we need another person who can work with nothing but training drivers, recruiting drivers.

Q. Mr. Morgan, you reported to the Court that you estimate you'd have to have 400 and some buses. Now, we have

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gone over several instances of additional personnel that you told the Court you would need and some of them you say you don't even have such persons now. We're trying to find out what basis [122] you have for telling the Court why you're going to need a driver training supervisor. You told us that the State already furnished that person.

Mr. Horack: He explained that.

A. Well, let me see if I can make it clear. At the present time the Department of Motor Vehicles furnishes driver trainers but they don't do the complete job.

Q. As you would like to see it done. A. As it's got to be done to see that these youngsters are properly trained and trained on specific pieces of equipment. It may be that they will take their training on one type of equipment and they may be assigned to a different kind of bus and we need a person on our staff who can fill in and substitute for them just as we're doing now. We're doubling up with the three people we have now.

Q. Have you approached the State about providing another one? A. We asked them and they assigned us $\frac{3}{4}$ of one. This is still not adequate.

Q. You're saying that because of the additional buses you have to have this person or without these buses you have to have him? A. And we're going into. . .

Q. Would you answer that? A. I'm saying because of the additional buses we'll have to have them.

[123] Q. Because of the additional buses you have to have the driver training supervisor? A. Yes. We're going into something beyond the State operation.

Q. Well, we're going to come to that. Have you approached the State about providing this person if you have to put the buses into operation, this driver training super-

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visor? A. That is one of the things on that list of activities I gave you that I was to do and I haven't had a chance to.

Q. I see. So this is an item that might be paid for by the State? A. The State, Mr. Chambers, as you know, furnished the minimum to any system and the minimum is not enough to insure the safe operation of buses in this school system.

Q. Are you saying that's true even today without the additional buses? A. Yes, I'm saying it's true today.

Q. Now, what is this bus route specialist? A. All right. This is a person that we need to check bus routes for safety, that the buses are running in the safest manner possible, that the stops are safe, adjusting routes when it becomes necessary, rerouting buses, and working with the principals of the schools to make sure that the bus routes and the buses are routed in the most efficient manner to give the greatest service to the children, working altogether with routes. Presently we've got men doubling up on it and not [124] half-way doing the job. It's not being checked out.

Q. Are you saying you don't have one now? A. We are utilizing people presently to do that that do not have the time to do it.

Q. You don't have a bus route specialist today? A. We've got really, I think, three of them. They are the three supervisory personnel that's doing all these other jobs.

Q. And these additional nine that you're adding couldn't do that? A. No, sir, I don't think so.

Q. So you don't have a person today with the title of bus route specialist? A. No, sir.

Q. Now, all of these duties you were just describing you said that the bus dispatcher would be doing basically. A.

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The bus dispatcher, I said, would be sending buses where you have a bus broken down. He wouldn't be checking routes.

Q. I see. Mr. Morgan, have you checked the new attendance zones to determine which one of these zones would qualify for state support in terms of providing transportation? A. No, sir.

Q. And all this money you indicate down here, the zones that would qualify for State assistance, you would receive the same kind of State support you have been receiving in the past. A. Mr. Chambers, it was not in my directions to estimate where [125] the money would come from or who would bear any portion of the expense. I was simply directed to get the overall picture and not take into consideration where the money would come from.

Q. Mr. Morgan, you have filed an affidavit and have testified this cost would be money that would be paid for by the local Board of Education. Now, have you considered, again, what portion of these funds that you estimate you would need would be paid for by the State? A. May we go off the record?

Mr. Chambers: Yes.

(Off the record at this point by consent.)

Mr. Chambers: Read the last question.

(The Court Reporter reads the question on Line 5 above.)

A. My answer is no.

Q. Just as an example, Mr. Morgan, the State provides transportation for students who live outside the 1957 city limits who attend schools outside those limits or who live

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in the city and are assigned to schools outside those limits, is that correct? A. Under the present law the State furnishes the operational money for the transportation of all children who are eligible for transportation outside the '57 city limits and for those children that are assigned inside the '57 city limits to schools outside the '57 city limits. Was that your question?

[126] Q. Yes. Just as an example, Tryon Hills is inside the city limits of '57. A. Yes.

Q. And Hickory Grove is outside the city limits. A. That's correct.

Q. Students being transported from Hickory Grove to Tryon Hills would receive State assistance. A. I don't know what the present law . . . that letter we got from Dr. Phillips and Davis and all that, I don't know.

Q. Excluding what you understand to be the anti-busing law, under the present State law would the students who are assigned from Tryon Hills to Hickory Grove be provided State transportation? A. I don't know what the present State law is.

Q. Didn't you just describe, Mr. Morgan, that the students who are living inside the '57 city limits and are assigned to school outside those limits are provided State transportation? A. Yes, but, Mr. Chambers, you asked me under the present law. Until that present law is cleared up, I . . .

Q. We also said exclude what you understand to be the anti-busing bill. A. If they applied the present law to this situation, yes.

Q. Would the students under the formula you have given us a moment ago and excluding any consideration of the State [127] anti-busing bill, who reside in Tryon Hills

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and assigned to Hickory Grove be provided State transportation? A. Yes.

Q. Would the students in Hickory Grove assigned to Tryon Hills be provided State transportation? A. Yes.

Q. Would the students in Devonshire and Briarwood who are assigned to Double Oaks be provided State transportation? A. For those children who are eligible for it, yes. I don't know the lines up in here, Mr. Chambers.

Q. Were eligible under this formula you mentioned a moment ago, is that what you're saying? All right, you want to talk about Lincoln Heights and Merry Oaks and Idlewild and Albemarle Road? A. Yes, right. Now, under the present law, excluding what you described . . .

Q. You're talking about excluding the anti-busing bill? A. Yes. The children assigned from Lincoln Heights to Albemarle Road and to Idlewild would be eligible for transportation.

Q. Under State support? A. Under State support, yes. Those assigned to Merry Oaks would not be.

Q. Except those students residing outside the '57 city limits who are in the present Lincoln Heights zone. A. Right. And the children assigned from Albemarle Road and [128] Idlewild would be eligible for State transportation. Those children in Merry Oaks that live outside the '57 city limits and assigned to Lincoln Heights would be eligible, but those inside would not be.

Q. Mr. Morgan, have you determined the number of students, the average number of students who are eligible for bus transportation but who do not utilize buses for getting to and from school? A. Mr. Chambers, under the original exhibits that I submitted to the Court I was requested to figure up State transportation, Finger plan; State transportation, Board plan; and the same thing with-

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out transportation, but we were figuring that and the game has changed so much with me to get up one set of figures to present and then come back to another one, I'd have to go back and dig all those out to see who would be eligible. We did figure it up one time, those we estimated would be eligible by State, but how that would apply to what I have done here, rezoning, I'd have to go back and figure that all up again.

Q. The only thing I'm asking you is under your present operation what percentage of the students who are eligible for transportation take advantage of it. A. I do not know.

Q. Do you have any approximate figure? A. I do know this, that there are large numbers of children [129] that are eligible for transportation that if they did exercise their right to ride the bus, there would be a considerable increase in the numbers riding. For example, you mentioned East Mecklenburg. East Mecklenburg has approximately 2100 children. I believe our reports show that only about 600 of them ride the bus. So there are 25, I believe we stated, that are in the area eligible—maybe I'm getting tangled with South Mecklenburg here—but, anyway, approximately 25 eligible in the present area . . . not eligible for transportation, excuse me. And of the balance, if we use 2100 and take 25 from that and that leaves you 2075, only approximately 600 of those children are not exercising that right. I use that as an example to show you if all the children did exercise the privilege of riding that there would be a considerable increase in our present transportation under the State law. We find that this will vary from area to area. The percentage riding at South Mecklenburg will be greater than the ones riding from East Mecklenburg, and we can come on to West Mecklenburg and all the schools and you would find this to be true. This is where

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I came at it a minute ago, saying that the children in rural areas and other economically deprived areas of our present system, that more of those children ride than do youngsters in the more affluent areas.

Q. Do you have an average? A. No, sir, I don't.

【130】 Q. Well, if we took the number of students from these lists that you have supplied to determine those eligible and used your monthly reports to get the average number of students who are transported, we can determine the average number of students in the system who are eligible for transportation but who provide other means for getting to and from school. A. Yes, sir, we'd have to do that with the principals school by school in order to get that.

Q. The monthly reports would show that, wouldn't they? A. No.

Q. They don't show the number of students transported each month? A. They show the number of children but they don't show the number eligible.

Q. I know, but we can take your list of the pupils in the school who are residing within a mile and a half radius of the school and subtract that from the total number assigned to determine the total number eligible, could we not? A. Yes. On the original 23,384 we took off of the senior high schools where we fairly well knew the senior high schools, which was the easiest for us to do, and applied a percentage to get that 23,384. Otherwise that number would have been much larger than the figure I showed. We did apply that to the senior high schools because these are youngsters who drive to school.

Q. You didn't apply it to these later figures that you submitted 【131】 to the Court. A. The rezoned figures, no, because it was an entirely different picture then because you begin to get into areas where youngsters do not have the means of furnishing their own transportation.

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Q. Mr. Morgan, isn't East Mecklenburg and South Mecklenburg still there and don't you still have these same exceptions in the East Mecklenburg and the South Mecklenburg rezoned attendance areas? A. The areas that are presently in East Mecklenburg you're saying? Mr. Chambers, look here. What I'm saying is you'll find these children down in this area here. . . .

Q. You're going to the southern part? A. The southern part of East Mecklenburg's area. You'll find a very high percentage of these youngsters riding the bus to school, whereas when you get in closer to East Mecklenburg you will find youngsters driving to school or parents are dropping them off at school on their way to work. That's the only way I know to explain it.

Q. Well, the point is you did not apply the formula that you indicated you used in your earlier reports which considered students eligible but who did not ride the bus in the figures that you submitted to the Court of the number of students who would be entitled to bus transportation under the Court ordered plan. [132] A. The 23,384 would be a much higher figure because from senior high schools only we tried to make sure we were trying to use the same thing and not inflate the figures. We used those percentages—and I'll say this—for only those children in the areas I described to you. When we begin to move out into areas where we knew they used transportation, we applied maybe 95% of them would ride.

Q. Did you apply any sort of formula like that to the figures you submitted to the Court on March 17? A. We used the same basis for figuring those that we did originally.

Q. You applied the percentage formula? A. Yes, sir.

Q. For East Mecklenburg? A. Yes, sir.

Q. I thought when we went through East Mecklenburg the other day to determine that you'd have about 469 who

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live in the rezoned area, 4 who were now transported and 465 who would be eligible. A. That's what I was trying to explain to you here. In this rezoned area of East Mecklenburg we took these children in this area originally in the 23,384 and we applied about a 95%. See this area right here. In these grids up here we said that approximately 95% of those children would use transportation in the 23,384. In this 19,000 figure here that [133] we used, we used the same, we went on the same basis.

Q. You applied 95% or 100%? A. 95%.

Q. Would you show me on the affidavit you submitted on March 17 where you applied only 95% A. Well. . .

Mr. Horack: Mr. Chambers, he didn't say that he had said that in his affidavit, I don't believe.

Mr. Chambers: Well, that's all I've been asking him about.

Mr. Horack: He's explained to you, as I understand, how he arrived at the figures submitted, and it was on a school by school experience basis.

Q. Let me ask this question. Mr. Morgan, in the affidavit you submitted to the Court did you list as additional students to transport 100% of the students eligible in all of the areas? A. In the rezoned areas?

Q. Yes, sir.

Mr. Horack: He said 95%.

A. I said we applied the same principles to those that we did utilizing the entire area. Down here we may have said only 35% would use it down in here.

Q. Let's take East Mecklenburg and let's apply your formula. We didn't go through counting the grids but let's

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count the [134] grids in East Mecklenburg and use your printout chart and see how you applied 95%.

Mr. Horack: I object to this line of questioning, Mr. Chambers. Mr. Morgan assuredly is not a statistician and it's already been represented that he worked together with a staff of 11, 12 or more people with computers that worked out this data and I don't think it's fair to put him in the middle of all this detailed data when admittedly he is not a statistician and require him to come up with a specific figure. Therefore, I object to this approach and really should have interposed that same objection on some of the same matters and techniques when we were convened yesterday.

Mr. Chambers: Mr. Horack, Mr. Morgan testified that they had determined the number of eligible pupils in the rezoned area, those additional ones that would be added to the area and had applied a formula of 95% of these pupils in the inner-city who would take advantage of it and would elect to be transported rather than provide their own means of transportation. He has also testified that in the area nearer to East Mecklenburg that most of those students, although eligible, [135] provide their own means of transportation and that they had applied a formula for those students, too. The only thing we asked Mr. Morgan is to show us how he applied that formula.

A. The thing, Mr. Chambers, that I'm having difficulty with here is determining those grids that a part of them are in the area and I testified that the printout that they

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have on house by house, or student by student in the grids that the school he attends is coded there.

Q. Mr. Morgan, for the 95% formula you indicated you were concerned with the inner-city children in the northern part of the East Mecklenburg school district. This, I thought, would be concerned with the students from grid 377A north. A. It would also be concerned, Mr. Chambers, in inner-city, of the children here.

Q. You're talking about grid 458A? A. That portion of it.

Q. But you just testified that students in this area generally provide their own means of transportation to school. A. Well, I didn't testify that particular area. I said in the area as a whole. You'll have to know the particular areas and know where that is in order to know whether they do or not.

Q. Do you know that area? A. Yes, sir, it's just off of Sharon Amity.

[136] Q. Isn't that the section where students generally provide their own transportation? A. Off of McAlway and those streets in there, not altogether, no, sir.

Q. You testified a moment ago that you had about 2000 students under the old zone at East Mecklenburg who were eligible for transportation and you transport only 600. A. I believe the records will show that.

Q. And you said that because you were adding the northern section of that attendance zone that you thought that about 95% of the students would elect to be transported by public transportation. A. I said of the rezoned area to East Mecklenburg. There are other areas in there other than these areas that have been rezoned.

Q. I understand that but you testified that in the area immediately northwest of East Mecklenburg that those

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students generally provide their own transportation. A. I didn't say all of them would.

Q. I understand. We have a figure of one-third of the students in the old attendance zone who have elected to be transported by public transportation; two-thirds provide their own means of transportation. A. I'll have to go back. I came up here with a total of 577 and I have here, lived in rezoned area 469; 4 are now being [137] transported; 465 that are being rezoned. As I counted the area, I didn't count all the blocks that you mentioned, Mr. Chambers, because part of that is already in the East Mecklenburg area. See, I didn't count 377. Here is the East Mecklenburg area at the present time so I didn't count that. You said 377, I didn't count that.

Q. Are 345C, A, and 320 C and A, are these presently in the zone? A. Yes, sir . . . no, no. And 319B and D.

Q. Mr. Morgan, just looking at the map, you say that 600 students are electing to be transported in the old zone and you say that most of these students are coming from the southeastern part of the zone. A. No, no, I didn't say that. I said that a larger number of children in this southeast, south of the school will utilize transportation more than they will in the area immediately around East Mecklenburg and I did not include areas on farther out because we have found they use transportation more than those that live immediately around the school where the parents drive by the school or take them.

Q. Let me ask you this, Mr. Morgan. Apparently presently only one-third of the students in East Mecklenburg who are eligible for transportation elect to ride public buses, 600 of 2000.

Mr. Horack: You mean school buses.

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Q. School buses, yes. Is that correct? [138] A. Yes.

Q. In your report that you submitted to the Court on March 17 you said that 469 students lived in the rezoned area, additional students. A. Yes.

Q. Is that correct? A. Yes.

Q. 469 new students were added to the rezoned area, is that correct? A. Yes.

Q. What percentage of those students did you determine under the formula that we have talked about under the present system would elect to provide their own means of transportation? A. All right. 100% because 465 and 4 makes 469.

Q. So you say you are not applying any percentage formula to the affidavit you submitted on March 17. That's all I asked you before. A. I see what you mean now. No, I took the number of children.

Q. You used the percentage of 100%? A. Right.

Mr. Chambers: I have no further questions.

By Mr. Horack:

Q. Mr. Morgan, it's a fact, is it not, that in assembling all this data in these two recent submissions in response to the Court's request as contained in the order that I believe was [139] dated March 6 you did have a group of people working with you to ferret out all this information and to check and cross check it, did you not? A. I had a total, I believe, of eleven people who worked with me in compiling all of the data. Some of those worked on the maps for the Court. Others worked with me on the counting of the rezoned children and the other data that was required.

Q. In your affidavit you gave an estimate of the total

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amount of man hours that were employed. I ask you what that figure was and if that represents all of the time that ultimately was used on this project. A. At the time I gave you that, Mr. Horack, there were other hours put in after that were not included in the hours I gave you. I believe I gave you some approximately 600 man hours and I believe that some of us worked some additional time which brought it to about 675, as I recall, total hours, of the people who worked with me plus the secretaries who we used on various occasions to help us, doing the typing and working the reports out.

Q. Would it be fair to describe this as being a very laborious process?

Mr. Chambers: I object to that.

Mr. Horack: Well, strike it.

Q. Mr. Morgan, refer to the cover page of item 2. I direct your attention to the column entitled now transported which shows [140] a grand total of 9,016. Would you please tell us whether you anticipate the children represented by that total figure, that they will travel a greater or lesser distance than they are now traveling?

A. I have stated here that a substantial number of them will travel a greater distance.

Q. Would you explain why? A. Well, using the high school map. . . .

Q. I direct your attention to the West Charlotte area under the Court plan. If you think that would be truly representative, please comment on that or if you don't think it will, pick out another one. Pick out whichever one you think best illustrates whatever you have to say.

A. The children here presently being transported to

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Independence and the children in the area that have been rezoned from Garinger to West Charlotte will travel a greater distance to school than they would have to they'll travel a greater distance farther to West Charlotte than they would to Garinger or Independence. You can see by the map the distance to these two schools and so you see they are traveling I don't know how much distance—it would have to be calculated—but it's a considerable distance to West Charlotte.

Mr. Chambers: I object to the word considerable.

Q. What effect, if any, would these greater distances have on costs of bus operations and time of students traveling? [141] A. Well, it's additional mileage which, of course, is going to take more money for operation.

Q. I direct your attention to the map that was colored up and submitted to the Court, map #1, attendance areas for elementary schools.

Mr. Chambers: Showing the paired schools?

Q. That's right, showing the paired schools, and when we began our deposition yesterday we were measuring as the crow flies with a ruler the various distances between the respective paired schools. Comment, if you will, what effect of the distance the bus must travel and the distance the children must be transported with reference to the areas that lie beyond the school, using Olde Providence as an example. A. The children in Olde Providence that are paired with the youngsters in First Ward, the fifth and sixth grade youngsters traveling to First Ward, of course, will travel a much greater distance but, by the same token, the children in grades 1 through 4 paired with the young-

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sters in Olde Providence will, by the same token, have to be transported much farther.

Q. What I'm asking you to comment on, using Olde Providence Elementary as paired up with First Ward as an example, how will it effect the distance traveled for those 4th and 5th graders who will be cross-bused to First Ward who live in the various southern portions of what is shown in brown as the [142] Olde Providence area on this map. A. Well, Mr. Horack, it's the 5th and 6th grade youngsters.

Q. Excuse me, 5th and 6th grade youngsters. A. A 5th or 6th grade youngsters that is on Highway 51 that's picked up by bus there and travel to Ray Road. . . .

Q. Are you pointing to the more southernly margin? A. I'm pointing to the most extreme margin, yes, sir. That are picked up on 51 and travel to Olde Providence must then travel on the nearest route to get to First Ward.

Q. So that extra distance would be in addition to whatever the measured distance is between the two schools, two paired schools involved, is that correct? A. Yes.

(Off the record at this point by consent.)

Q. There were certain inner-city children—is that beginning with the 1969-70 school year? A. Yes, sir.

Q. Who were transported from the certain inner-city schools out to certain outlying schools located predominantly in the white suburban area. Would you please tell us what your conclusions are from having made that study of the number of buses and the distances now being traveled by those buses? First of all identify the inner-city schools previously attended by those children and the schools in the predominantly white areas to which they are

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now being transported. [143] A. This information came from the fourth month bus report for those youngsters who were assigned by the Board which was approved by the Court for closing and assigned to outlying schools. There were a total of 30 buses that traveled for that month 1,051 $\frac{3}{10}$ miles. I divided the 30 buses into that to get the average daily mileage per bus.

Q. And what was the daily average per bus? A. 35 miles daily.

Q. Is that round trip? A. Yes, sir.

Q. So half of that would be a one-way trip and it would 17 $\frac{1}{2}$ miles one way, is that correct? A. Yes, sir.

Q. I ask you to identify the inner-city schools previously attended by these children and also the schools to which they are now being transported.

(Off the record at this time by consent.)

Q. I believe I have a list and I would read them off to you, Mr. Morgan, and you will simply tell me whether I'm correct or not.

Mr. Chambers: If it was showing the time. . . .

A. I can give the schools from memory and then I'll stand to check myself.

Q. First of all the inner-city schools. A. The schools were Fairview, Bethune, Zeb Vance, Isabella [144] Wyche, Alexander Street, Ervin Avenue and Metropolitan Senior High School.

Q. To what outlying schools are these children now being transported? A. They were assigned to Olde Providence, Beverly Woods, Sharon, Selwyn, Park Road, Idlewild.

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Q. By referring to one or more of the maps already in evidence, using the same ruler technique employed earlier in this deposition yesterday, you could measure by a rule as the crow flies the distance between these inner-city schools and the outlying schools to which the children are now being transported, could you not? A. Yes.

Q. Would such a crow fly rule measurement be indicative of the actual distance traveled by one or more these 30 buses to which you referred? A. In some schools yes, in some schools no.

Q. Why not in some schools? A. Well, because the children do not travel from school to school. They travel from their home to the school.

Q. Do they travel as the crow flies, as the straight line rule would measure? A. No, but they have to travel the nearest and safest route for them to follow.

Q. Is that or is that not normally a longer distance than the [145] crow flies? A. Yes.

Q. You testified that in computing your figures to ascertain the number of additional buses which will be required, namely, a total of 422, you have based this on what we refer to as a 54-capacity bus, is that correct? A. Yes, sir.

Q. What, if anything, do you have to say with reference to the use of 54-passenger or larger capacity buses in the in-town areas, inner-city areas? A. Well, . . .

Q. As far as the suitability of large buses or small buses or whatever. A. We will find many instances of where it would probably be necessary to use smaller buses. I indicated yesterday that there would be 36-, 48-passenger buses and there would also be occasions when we would be able to use the larger capacity bus, the 67-capacity bus, but our estimates are that it will average out to a

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54. It could be that when we get deeply involved with inner-city transportation that we will find it necessary for maneuverability in the inner-city to use a smaller bus. We are experiencing this now, where we could use to advantage smaller buses although we have 54 capacities now running in these 30 buses we are presently using. So until the routes are established and the determination of [146] where the children live and how will be the safest and best way to serve these youngsters, we will not know exactly what capacity buses are needed on each route, but I'm fairly confident it will average out to a 54-passenger bus. And if I might interject something else here, Mr. Horack, I have never said that what we're doing in our present transportation system is the safest and best way of transporting children. If we had the money and could afford the additional buses, I would seat every child that rides a bus and we would put a seat belt on that bus.

Q. You mean on the child. A. A seat belt on the bus so the child could buckle himself in because I think it's not only in the inner-city area but all over that I feel this is a much needed safety piece of equipment needed on our buses.

Q. How would you relate what you have just said to the desirability or undersirability of allowing children to stand on buses? A. I don't consider it the safest and best way for children to ride and I have so indicated that I have never felt that and although we try with our present system to have children seated, we try to only have those standing that have to stand the shortest distances.

Q. Who would be those who would stand the shortest distance? A bus at the beginning of the pickup route of the bus, I [147] presume the bus is empty when it starts and it fills up as it goes along, is that correct?

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A. Yes. An example of an undesirable situation where we need to do something about it was the example Mr. Chambers pointed out this morning of the number of children riding those two loads to Randolph Junior High School where we have 68 children on a bus. This is not desirable, but. . . .

Q. Why do you permit it? A. Well, Randolph is a fairly compact area and the children that get on last have the shortest distance to ride and we do not have buses to solve all those problems.

Q. Why don't you get the buses? A. Well, it's a matter of funds.

Q. Along this same line, would you care to comment, please, with reference to the standup problem, if it is a problem, comparing junior and senior children standing up on the one hand and elementary children on the other from a safety standpoint.

Q. Well, from the safety standpoint I consider it more dangerous, of course, for elementary children to stand than I do either junior or senior high school.

Q. Why? A. Well, they are smaller youngsters; there are discipline problems on the bus, they are pushing and shoving and horseplay that should not go on. However, it does go on and the [148] youngster is not as conscious of safety as the older child is.

Q. What you're saying is that you have a great number of situations as far as over-capacity, having too many children on a bus, under the existing setup? A. In many cases we do and we work throughout the entire year to adjust routes and adjust loads to make it safer for the children.

Q. Would what you have just described account for the differences in the load figures as they appear from

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month to month in the principals' monthly bus reports?

A. Yes, sir.

Q. Would you care to give us your views on the wisdom or lack of it of having children stand on long interrupted, perhaps even express bus routes from the outer area schools into the paired schools?

Mr. Chambers: I object to that question. I don't know of any discussion that we had on direct examination dealing with students standing and I understand that Mr. Morgan has estimated that the 54-passenger bus would be able to seat all the students that he said were needed to transport. He used 40 students for the senior high schools and he said he used a range of 54 for the junior high school grades.

[149] Mr. Horack: Well, we'll let him answer the question and then . . .

Mr. Chambers: I can't stop you from asking the question. I just wanted to note my objection in the record so we wouldn't have anyone misled.

Mr. Horack: Would you read the question back, please?

(The Court Reporter reads the question on Line 13, Page 148.)

A. I don't think it's wise. I don't think it's wise on relatively short runs to have them stand.

Q. Are there any special factors in the inner-city that might lead you particularly to this conclusion? A. Well, the nature of the city traffic, the congestion in the inner-city, the number of vehicles that are encountered in an inner-city area where the traveling public is coming back

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and forth. There is a concern on my part as to that and it is for that reason that I said we have some presently operating that I do not consider safe and our reports will show that you will find in these buses that are now operating in the inner-city, those 30 buses I mentioned, that where we had one bus serving Park Road and Selwyn, as soon as we could readjust loads and use another bus we put another bus on there to reduce the load to that particular school. It was such a problem that the principals reported to me at both schools that they had a problem with children standing and [150] it was the only safe thing to do to split these loads up and we finally were able to shift around and use another bus to relieve this load. So it's not just these that we're talking about for the future, it's those we now presently have that I am concerned about as well and we're making every effort to reduce the numbers on those so that as few as possible, if any, will have to stand.

Q. Turning to another subject, I want to be sure I'm clear on this point. Reference was made to the principals' monthly reports that in some instances show a third trip that carries one or maybe sometimes it's two or three passengers. Did I understand you correctly to say that those undoubtedly were instances where the passenger was a driver being transported to the school? Explain that. A. Our report shows third trips.

Q. By our report you're talking about the principals' monthly reports? A. I'm speaking of the principals' monthly report. There has to be an accounting to show the mileage driven and how many students transported, and so forth, and by necessity it has to show it somewhere for the record. So we record it as another trip but actually . . .

Q. Is that required for the State reports? A. It is required for the State reports. But if we are going to secure

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drivers, they cannot drive to a school and stop [151] and not have any way to get to school. So we let a bus go from that point on to the senior high school to where they are assigned and it just simply shows up as a third trip. If you look at the mileage, you can see it's a relatively short mileage. It's 2 miles or 3 miles or $2\frac{1}{2}$ miles from the elementary or junior high school to the senior high school.

Q. Now, heretofore in various submissions to the Court your affidavits have referred to the number of trips traveled by a bus or the average number of trips traveled by a bus. Did you count as a trip the type of trip you have been referring to here included in the State reports to the State when they are only carrying the driver? Was that included as a trip in your previous computations? A. I don't know, sir. Mr. Horack, I might add this to it, that you will see on some principals' reports showing a third trip on them, showing three trips. Now, it can very easily be that one bus is serving two schools and it will drive to one school and deposit youngsters and then will go on to the other school and deposit the balance of them and then it will make a third trip on to another school. But all of these are schools that are very close together where it's permissible to do this. In the accounting of it the principal should have shown that as one trip but it shows up in some instances as two trips.

Q. Referring to the cost figures set forth as item 2 in the [152] information recently submitted to the court, I direct your attention to the drivers' salaries listed under a caption cost operation, using the senior high pages as an example. Did I understand you to state that those computations were based upon one driver per each additional bus? A. Yes.

Q. Do they include any supplemental or substitute drivers? A. Their salaries are computed on an hourly basis.

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Q. I know, but this represents the estimate of the cost involved in providing drivers' salaries and I understood you to say that those salaries are based upon one driver per bus, is that correct or not? A. Yes, it's based on one.

Q. Is there any figure in here in the estimated cost of providing this additional transportation that takes into account any additional or supplemental or substitute drivers? A. Well, if a driver does not drive the bus for those hours he is not paid for it. His substitute is paid in his stead. Now, if you're getting at field trips and extra trips such as that, there is no computation in here on that. If it's extracurricular activities and all that, we have not accounted in this. This is based upon the hours required to drive to the schools and not for extracurricular. If a driver does not drive and a substitute driver drives in his place, the regular driver is not paid for the hours he does not work.

[153] Q. So that would not involve any additional cost is what you're saying? A. No, sir.

Q. Do you have in our existing operation substitute drivers or a need for them? A. Yes, sir.

Q. Do you have any approximation as to how many additional are needed? A. Somewhere in previous testimony or documents I worked it out and I stated that there were so many substitute drivers required each month but I do not have that figure. It will vary from month to month; it will vary from day to day; whether a youngster is sick, whether he has some conflict in the school program and he has to get a substitute to take his place. There are many variances where we have to use substitute drivers and this can amount to probably, with our present fleet, close to a hundred substitute drivers that are needed to fill vacancies from day to day.

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Q. Do you presently have a full complement of these extra hundred relief drivers that you say are needed? A. Not all the time, no, sir.

Q. Again with reference to drivers' salaries, how is a driver paid? Is he paid for the period when he is actually transporting children or is he paid . . . what basis is he paid on? A. The driver is paid from the time he cranks up his bus.

[154] Q. You mean in the morning? A. From the time he starts his bus until he terminates the bus and the children are unloaded and he makes his count and takes the report into the principal.

Q. What about at the end of the day? A. The same way, from the time he enters the bus and cranks the bus up and until he gets to his home and parks his bus. He's paid for that time, and is paid on the minimum wage for student drivers. Adult drivers, we have paid them according to our classified salary schedule.

Mr. Horack: I believe I'm through.

Mr. Chambers: I just want to ask one or two things.

By Mr. Chambers:

Q. To show possibly some exceptions to your third trip, I show you the principal's monthly report for December 1, 1969, through January 9, 1970, the bus driven by Frankie Stroud, and it shows a total of four trips. It looks like he carries 45 students on the first trip to Davidson, 5 students on the second trip to Cornelius, 11 elementary and 6 high school students to Alexander on the third trip and 29 students to north on the fourth trip. A. All right. First of all, this is an 82 maximum capacity bus. On the first trip

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there are 45 children that get off at Davidson. On that bus he has picked up also 5 children who [155] are dropped off at Cornelius. You know Cornelius is just a short distance from Davidson and so the bus drives on down and deposits those children and then picks up a load of youngsters that are going to Alexander and to North Mecklenburg. North Mecklenburg is only, oh, 2/10 of a mile or so from Alexander. So what he is doing, this shows four trips, Mr. Chambers, and that's what I was trying to point out. This should really be two trips.

Q. It shows on the report to the State that he carries 46 students on the first trip, 34 on the second trip, 36 on the third trip and 29 on the fourth trip. A. Right, and what he's actually doing, these children right here, the bus turns in and drops them off at Alexandar and goes on down to North Mecklenburg.

Q. Would you look at the bus driven by David Gorman. A. That is a 75 capacity bus. On the first trip to Long Creek they transport 55 youngsters, well, 56. I don't know whether the driver is included in that or not—could be. And the next trip shows a total of 60 children going to Alexander and then other children that have come in on buses to Alexander are then transferred on that bus just to go on to North Mecklenburg. It's only about two minutes or so from the school there.

Q. Well, the 40 students are going to North Mecklenburg, they wouldn't be bus drivers, would they? [156] A. No, sir, they would be children that had come in on other buses from the remote area to that.

Q. I show you another bus that seems to make a trip to Myers Park High School to deliver 29 students and then two more trips to Selwyn elementary school, the first trip carrying 42 and the second one carrying 27. A. I'm trying

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to figure out, Mr. Chambers. Look at this. It shows bus 17 and 16 here. In parenthesis it shows two buses here. No, that's the age of the drivers. I'm trying to find out the number of the bus and why.

Q. Anyway, we can't quite explain whatever appears as the third trip is delivery of drivers. A. No, sir, and it would not be and I can't . . . I'd have to go back to the principal and driver to see what they have done here.

Q. I just had one question about something that appears. This is also the fourth month report for Smith Junior High School. This shows a first trip, the bus driven by M. Hance, with 84 students. A. A 90 capacity bus. They no longer make those buses. That is one of the cab over the engine. I guess you'd refer to it as a transit type bus. As I say, we no longer get that size bus. It shows a maximum capacity of 60 with 84 on it . . . a maximum capacity of 90 with 84 on it.

Mr. Chambers: I have nothing further. I'd like [157] to get a copy of this and include it as an exhibit to Mr. Morgan's deposition.

(Exhibit attached to all copies of deposition.)

• • •

CERTIFICATE

I, Evelyn S. Berger, Notary Public/Reporter, do hereby certify that J. D. Morgan was duly sworn by me prior to the taking of the foregoing deposition; that said deposition was taken and transcribed by me; and that the foregoing 157 pages constitute a true, complete and accurate transcript of the testimony of the said witness. I further certify that the persons were present as stated on the caption.

1187a

Deposition of J. D. Morgan March 19, 1970


I further certify that I am not of counsel for, or in the employment of any of the parties to this action, nor am I interested in the results of this action.

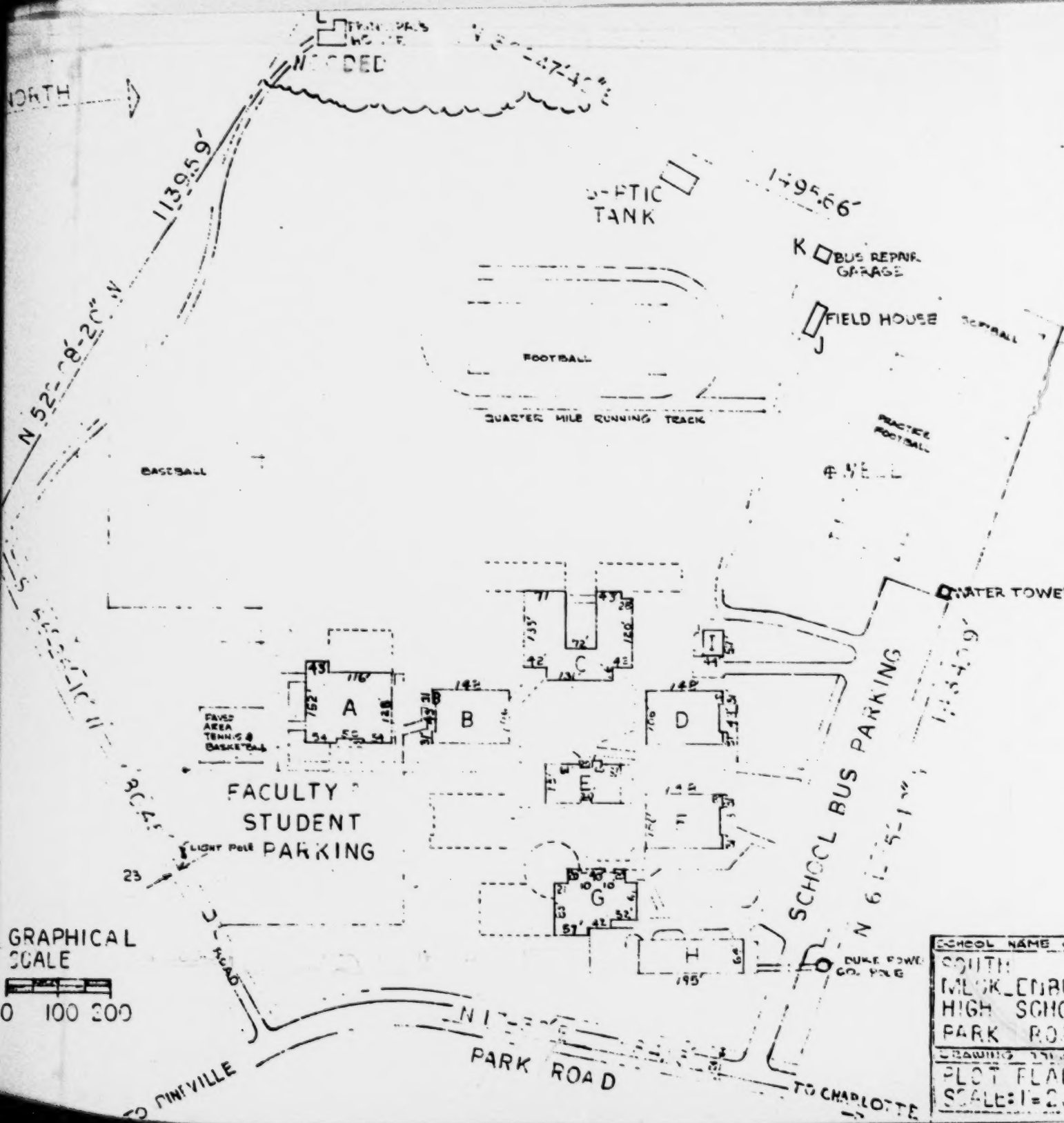
In witness whereof, I have hereunto subscribed my name this 3rd day of April, 1970.

/s/ EVELYN S. BERGER
Notary Public in and for
County of Mecklenburg
State of North Carolina

1188a

Exhibit Attached to Foregoing Deposition

(See Opposite) 



BLDG LEGEND

- A PHYS. EDUCA. BLDG.
- B CLASSROOM BLDG.
- C SPECIAL SUBJECTS BLDG.
- D CLASSROOM BLDG.
- E CLASSROOM BLDG.
- F ADMINIS. & LIBRARY
- G CAFETERIA
- H INDUSTRIAL SHOP & MUSIC
- I HEATING PLANT
- J FIELD HOUSE
- K BUS MAINTENANCE GARAGE
- L PRINCIPALS RESIDENCE

GRAPHICAL
SCALE

0 100 200

SCHOOL NAME & TYPE		NAME OF ADMIN. UNIT	
SOUTH MECKLENBURG HIGH SCHOOL PARK ROAD		CHARLOTTE - MECK. SCHOOLS 724 E. FOURTH CHARLOTTE, N. C.	
DRAWING TITLE	BLDG. SHOWN	UNIT NO.	SHEET NO.
PLOT PLAN SCALE: 1"=200'	ALL BLDG.	1	1 OF 1

1190a

Plaintiff's Exhibit, March 20, 1970

(See Opposite) 

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ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS ^{1/}

SCHOOLS		DISTANCE			NUMBER OF TRIPS ^{4/}		TRAVEL TIME	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Black	Inches on Map ^{2/} (a ↔ b) (1"=4000')	Miles ⁴⁰¹⁰ (a ↔ b) (c x ⁵²⁸⁰)	25% of ^{3/} Miles (25% x d)	Miles by Road (d + e)	Total ^{3/} Distance Traveled (f x h)		Time ^{5/} 12 MPH in Minutes (f x 5)	
Rowne	9 5/8	7.3	1.8	9.1	72.8	8 (4/4)	45.5	
Bruns Avenue	8 7/8	6.7	1.7	8.4	33.6	4 (2/2)	42	
at	9 1/8	6.9	1.7	8.6	94.6	11 (5/6)	43	
nd	3 1/8	2.4	.6	3.0	21.0	7 (4/3)	15	
Marie Davis	3 1/2	2.7	.7	3.4	44.2	13 (7/6)	17	

Figures contained in the chart are as supplied by the defendants. Plaintiffs contend that the estimate as to the number of buses required to transport the children to be transported, the number of buses required and the factor (column "e") added to determine distance is inflated. Plaintiffs further contend that the average speed of the buses (12 MPH) is grossly underestimated.

See Item 6a of Defendants' Submission of March 16, 1970.

J. D. Morgan testified in deposition on March 18, 1970, that an accurate estimate for the distance for a bus to travel between schools can be determined by measuring the distance on the map, point to point, and adding 25%.

Information is contained in Defendants' Submission of March 17, 1970. The number of trips equals the number of buses. Each bus is scheduled to make only one trip. The number of buses projected for transporting black students from the white schools to the black schools are given. The latter figure is apportioned between the white schools based upon the number of buses projected for the black students and is the second figure within the parentheses. The number of buses projected for each cluster is as given in the Defendants' Submission.

J. D. Morgan testified in deposition on March 18, 1970 that the estimated average speed for the all new buses is 12 MPH. If the buses average 20 MPH rather than 12 MPH, the average travel time would be reduced.

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS ^{1/}

DISTANCE				NUMBER OF TRIPS ^{4/}		TRAVEL TIME	
(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Inches on Map ^{2/} → b) (1"=4000')	Miles ⁴⁰¹⁰ (a → b) (c x ⁵²⁸⁰)	25% of ^{3/} Miles (25% x d)	Miles by Road (d + e)	Total ^{3/} Distance Traveled (f x h)		Time ^{5/} 12 MPH in Minutes (f x 5)	Total Time in Minutes (i. x i)
9 5/8	7.3	1.8	9.1	72.8	8 (4/4)	45.5	360
8 7/8	6.7	1.7	8.4	33.6	4 (2/2)	42	168
9 1/8	6.9	1.7	8.6	94.6	11 (5/6)	43	473
3 1/8	2.4	.6	3.0	21.0	7 (4/3)	15	105
3 1/2	2.7	.7	3.4	44.2	13 (7/6)	17	221

in the chart are as supplied by the defendants. Plaintiffs contend that the estimate as to the number of buses required and the factor (column "e") added to determine distance to be traveled, the number of buses required and the factor (column "e") added to determine distance to be traveled, the number of buses required and the factor (column "e") added to determine distance to be traveled. Plaintiffs further contend that the average speed of the buses (12 MPH) is grossly underestimated.

Defendants' Submission of March 16, 1970.

Plaintiffs' deposition on March 18, 1970, that an accurate estimate for the distance for a bus trip determined by measuring the distance on the map, point to point, and adding 25%.

Plaintiffs' deposition in Defendants' Submission of March 17, 1970. The number of trips equals the number of buses, projected to make only one trip. The number of buses projected for transporting black students and the number of buses projected for the white schools to the black schools are given. The latter figure is apportioned between the number of buses projected for the black students and is the second figure within the parenthesis. The number of buses projected for each cluster is as given in the Defendants' Submission.

Plaintiffs' deposition on March 18, 1970 that the estimated average speed for the all new buses transported is 20 MPH. If the buses average 20 MPH rather than 12 MPH, the average travel time would be reduced to 20.2 minutes.

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Wood	Double Oaks	5 1/2	4.2	1.1	5.3	58.3	11 (5.6)	26.5
Shire		7	5.3	1.3	6.6	79.2	12 (6/6)	33
Ben ley	Druid Hills	3 7/8	2.9	.7	3.6	43.2	12 (6/6)	18
erly is	First Vard	7 1/2	5.7	1.4	7.1	71	10 (5/5)	35.5
edowne		8 3/4	6.6	1.7	8.3	91.3	11 (6/5)	41.5
vidence		11	8.3	2.1	10.4	52	5 (3/2)	52
marle		10 1/4	7.7	1.9	9.6	76.8	8 (4/4)	48
wild	Lincoln Heights	10	7.6	1.9	9.5	57	6 (3/3)	47.5
y Oaks		5 3/4	4.4	1.1	5.5	22	4 (2/2)	27.5
enbrook	Oaklawn	3	3.8	1.0	4.8	33.6	7 (4/3)	24
Creek		8	6.1	1.5	7.6	53.2	7 (4/3)	38
Creek		7 7/8	6.0	1.5	7.5	15	2 (1/1)	37.5
x		7	5.3	1.3	6.6	39.6	6 (4/2)	33
aseegee								

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ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS

(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
5 1/2	4.2	1.1	5.3	58.3	11(5.6)	26.5	231.5
7	5.3	1.3	6.6	79.2	12(6/6)	33	396
3 7/8	2.9	.7	3.6	43.2	12(6/6)	18	2.6
7 1/2	5.7	1.4	7.1	71	10(5/5)	35.5	355
8 3/4	6.6	1.7	8.3	91.3	11(6/5)	41.5	456.5
11	8.3	2.1	10.4	52	5(3/2)	52	260
10 1/4	7.7	1.9	9.6	76.8	8(4/4)	48	384
10	7.6	1.9	9.5	57	6(3/3)	47.5	285
5 3/4	4.4	1.1	5.5	22	4(2/2)	27.5	110
3	3.8	1.0	4.8	33.6	7(4/3)	24	168
8	6.1	1.5	7.6	53.2	7(4/3)	38	266
7 7/8	6.0	1.5	7.5	15	2(1/1)	37.5	75
7	5.3	1.3	6.6	39.6	6(4/2)	33	198

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
ry Grove	Tryon Hills	8 1/8	6.2	1.6	7.8	78	10(4/6)	39
laire	Univer- sity Park	10 1/8	7.7	1.9	9.6	96	10(4/6)	48
Road		10 5/8	8.1	2.0	10.1	111.1	11(5/6)	50.5
rn		6 1/2	4.9	1.2	6.1	54.9	9(4/5)	30.5
or Park	Villa Heights	4 1/4	3.2	.8	4.0	40	10(5/5)	20
erfield		4 3/8	3.2	.8	4.0	36	9(4/5)	20
						1374.4(k)	203(l)	
						Average Distance Per Trip		
						Average Time Per Trip in		

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FOR REMAINDER OF PAGE

ESTIMATED DISTANCE AND TRAVEL TIME BETWEEN CLUSTERED SCHOOLS

(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
8 1/8	6.2	1.6	7.8	78	10(4/6)	39	390
0 1/8	7.7	1.9	9.6	96	10(4/6)	48	480
0 5/8	8.1	2.0	10.1	111.1	11(5/6)	50.5	555.5
6 1/2	4.9	1.2	6.1	54.9	9(4/5)	30.5	274.5
4 1/4	3.2	.8	4.0	40	10(5/5)	20	200
4 3/8	3.2	.8	4.0	36	9(4/5)	20	180
				1374.4(k)	203(l)		6312 (m)
					Average Distance Per Trip in Miles (k/ 6.8 Miles		
					Average Time Per Trip in Minutes (m/l)= 33.6 Minute		

Defendants' Response to Plaintiffs' Exhibit

(Filed March 21, 1970)

Submitted herewith is Defendants' Response to Plaintiffs' Supplemental Exhibit of March 20, 1970, in the form of an Affidavit by J. D. Morgan and John W. Harrison, Sr.

The information which the Plaintiffs' Supplemental Exhibit purports to refer to was the Deposition of J. D. Morgan taken at the instance of the Plaintiffs on March 19 and 20, 1970. The Defendants have not received and hence have not examined the transcript of that Deposition and enter an objection to a consideration by the Court of the Plaintiffs' Supplemental Exhibit of March 20, 1970, for the above-mentioned reason and also for the reason that it completely ignores the explanations, the data and information given by Mr. Morgan on that occasion. The Defendants submit that no consideration can be given to the self-serving, piece meal accounts of the Plaintiffs.

Respectfully submitted, this 21 day of March, 1970.

/s/ WILLIAM J. WAGGONER
William J. Waggoner

/s/ BENJ. S. HORACK
Benj. S. Horack
Attorneys for Defendants

**Response to Plaintiffs' Supplemental Exhibit of
March 20, 1970**

J. D. MORGAN and JOHN W. HARRISON, SR., being duly sworn deposes and says that:

1. J. D. Morgan is Assistant Superintendent for Business Services and John W. Harrison is Director of Transportation for the Charlotte-Mecklenburg schools, and as such are thoroughly familiar with the bus transportation requirements that will be necessary to provide transportation between the clustered elementary schools under the Court approved Plan.

2. Mr. Morgan has read and analyzed the Plaintiffs' Supplemental Exhibit of March 20, 1970, and says that the statements, the purported calculations and conclusions set forth therein are gross distortions of the true facts as they relate to the transportation requirements which will be necessary with reference to the paired and clustered schools. Both Mr. Morgan and Mr. Harrison reaffirm that the estimates and projections previously submitted by the Defendants are correct.

3. Attached to and made a part hereof is a tabulation of the number of daily miles (round trip) travelled by each of the indicated 30 buses that are now transporting the innercity children to schools in the outlying areas to promote desegregation for the school year 1969-70. These innercity children are those who previously attended inner-city schools that were closed pursuant to prior orders of the Court. Prior Orders of the Court identify these school children and the schools to which they are now being transported. The identity of the trip made by each of the buses

*Response to Plaintiffs' Supplemental Exhibit of
March 20, 1970*

(and the specifics relating thereto) are shown on the principal's monthly bus reports which are already in evidence at the instance of the Plaintiffs, the same being the monthly reports for the period from December 1, 1969 through January 7, 1970. The routes, traffic conditions and travel time for these 30 buses are comparable to the transportation that will be necessary in connection with the paired schools, and forms a reliable basis for the estimates and projections regarding the transportation for the paired and clustered schools under the Court Plan. The specifics shown on the above-mentioned principals' monthly bus reports with reference to each of these 30 buses is included herein by reference.

4. Also attached hereto and made a part hereof is a correct summary of data relating to accidents involving the 30 school buses transporting the above-mentioned inner-city children.

5. The purported data and tabulations set forth in the Plaintiffs' March 20, 1970 Supplemental Exhibit are inaccurate and distorted. They are based upon "crow-fly" ruler measurements of distances between the paired schools with an arbitrary add on of 25%. Although the 25% add on may sometimes be used as a rule of thumb for hasty measurement of map distances, it does not accurately reflect the bus route distances between two schools particularly as the distance relates to the streets and traffic arteries that must actually be travelled in order to transport the students from one school to another school. Further, the Plaintiffs' calculations completely ignored the bus distance involved in picking up students in outlying areas of an attendance zone in order to transport them first, for example, to Olde Providence, before resuming the journey to, for ex-

*Response to Plaintiffs' Supplemental Exhibit of
March 20, 1970*

ample, First Ward. Using Olde Providence-First Ward pairing as an example, a 5th or 6th grade child who lives a mile from Olde Providence will require 20 minutes walking time to get to Olde Providence Elementary, will expend about 5 minutes boarding a bus at that location, 52 minutes in transit to First Ward and another 5 minutes getting off the bus at First Ward—a total of an estimated 82 minutes. Using the same example for a 5th or 6th grader who lives more than 1 mile from Olde Providence, such a child must be bussed into Olde Providence before resuming his journey to First Ward. The foregoing is a typical example of the time factors and problems which will be involved in transporting children to and from the paired schools. Of course, the same factors are involved in reverse with reference to, for example, the First Ward 1st through 4th graders who will be picked up and transported to the outlying schools.

6. The figures and tabulations set forth by the Plaintiffs in their Supplemental Exhibit of March 20, 1970, are solely and entirely their own, not those of the School Board or its staff.

/s/ J. D. MORGAN
J. D. Morgan

/s/ JOHN W. HARRISON, SR.
John W. Harrison, Sr.

SEVERALLY SWORN to and SUBSCRIBED before me this 21 day of March, 1970.

/s/ VIVIAN KESTA
Notary Public

My commission expires:
April 2, 1971.

1196a

Tabulation

March 20, 1970

Thirty buses that are serving innercity children to promote desegregation for 1969-70 school year travelled 1051.3 miles daily for an average of 35.0 miles daily per bus.

DESEGREGATION BUSES

BUS NO.	DAILY MILES
23	43.2
86	34.0
116	44.0
171	51.5
174	20.0
175	73.3
176	33.1
183	22.6
283	42.0
304	50.0
309	30.0
310	30.0
311	33.0
312	44.0
315	38.0
208	41.3
302	25.1
303	30.0
305	33.0
306	26.0
307	24.6
308	33.0
313	35.0
314	21.1

Tabulation (Continued)

BUS NO.	DAILY MILES
285	23.5
301	33.6
299	46.0
317	20.0
300	37.6
181	32.8
	<hr/>
	1051.3

CHARLOTTE-MECKLENBURG SCHOOLS

TRANSPORTATION DEPARTMENT

March 20, 1970

DATA RELATED TO ACCIDENTS INVOLVING SCHOOL BUSES FOR
THE 1969-70 SCHOOL YEAR THROUGH MARCH 18, 1970
FOR A TOTAL OF 126 SCHOOL DAYS

- I. Thirty school buses transporting children from inner city to promote desegregation for the 1969-70 school year travelled an average of 1,051.3 miles daily for a total of 132,463.8 miles year to date. This same thirty buses have been involved in seventeen reportable accidents. This is an average of .57 accidents per bus, and an average of one accident per 7,792 miles travelled.
- II. Two Hundred and Fifty-Five buses travelled an average of 9,635.8 miles daily for a total of 1,214,110.8 miles year to date. These same 255 buses have been involved in 57 reportable accidents. This is an average of .22 accidents per bus, and an average of one accident per 21,300 miles travelled.

**Supplementary Findings of Fact
dated March 21, 1970**

Pursuant to the March 5, 1970 order of the Fourth Circuit Court of Appeals, the court makes the following supplemental findings of fact:

1. Paragraph seven of this court's order of February 5, 1970, as amended, reads:

"7. That transportation be offered on a uniform non-racial basis to all children whose reassignment to any school is necessary to bring about the reduction of segregation, and who live farther from the school to which they are assigned than the Board determines to be walking distance. Estimates of the number of children who may have to be transported have run as high as 10,000 or more. Since the cost to the local system is about \$18 or 20 a year per pupil, and the cost to the state in those areas where the state provides transportation funds, is about another \$18 or \$20 a year per pupil, the average cost for transportation is apparently less than \$40 per pupil per year. The local school budget is about \$45,000,000 a year. It would appear that transporting 10,000 additional children, if that is necessary, and if the defendants had to pay it all, would add less than one per cent to the local cost of operating the schools. The significant point, however, is that cost is not a valid legal reason for continued denial of constitutional rights."

2. A bird's-eye picture of the indispensable position of the school bus in public education in North Carolina, and especially in the school life of grades one through six (elementary students) is contained in a summary by the de-

Supplemental Findings of Fact dated March 21, 1970

fendant Dr. Craig Phillips entitled "RIDING THE SCHOOL BUSES" (Plaintiffs' Exhibit 15), published January 1, 1970, which reads as follows:

"The average school bus transported 66 students each day during the 1968-69 school year; made 1.57 trips per day, 12.0 miles in length (one way); transported 48.5 students per bus trip, including students who were transported from elementary to high schools.

"During the 1968-69 school year:

610,760 pupils were transported to public schools by the State

54.9 percent of the total public school average daily attendance was transported

70.9 percent were elementary students

29.1 percent were high school students

3.5 students were loaded (average) each mile of bus travel

The total cost of school transportation was \$14,293,-272.80, including replacement of buses: The average cost, including the replacement of buses, was \$1,541.05 per bus for the school year—181 days; \$8.51 per bus per day; \$23.40 per student for the school year; \$.1292 per student per day; and \$.2243 per bus mile of operation." (Emphasis added.)

In Mecklenburg County, the average daily number of pupils currently transported on state school busses is approximately 23,600—plus another 5,000 whose fares are paid on the Charlotte City Coach Lines.

Supplemental Findings of Fact dated March 21, 1970

3. Separate bus systems for black students and white students were operated by the defendant Mecklenburg County Board of Education for many years up until 1961. Separate black and white bus systems were operated by the combined Charlotte-Mecklenburg Board from 1961 until 1966 (Defendants' answers to Plaintiffs' requests for admissions, Nos. 1 and 8, filed March 13, 1970).

4. Pertinent figures on the local school transportation system include these:

Number of busses	280
Pupils transported on school busses daily	23,600
Pupils whose fares are paid on Charlotte City Coach Lines, Inc.	5,000
Number of trips per bus daily	1.8
Average daily bus travel	40.8 miles
Average number of pupils carried daily, per bus	83.2
Annual per pupil transportation cost	\$19—\$20
Additional cost (1968-69) per pupil to state	\$19.92
Total annual cost per pupil transported	\$39.92
Daily transportation cost per pupil transported	\$0.22

5. Information about North Carolina:

Population	4,974,000
1969-71 total state budget	\$3,590,902,142

Supplemental Findings of Fact dated March 21, 1970

1969-71 total budgeted state funds for public schools	\$1,163,310,993
1968-69 amount spent by state on transportation (including replacement busses)	\$14,293,272.80
1969-71 appropriation for purchase of school busses	\$6,870,142
Average number of pupils transported daily, 1968-69	610,760
Average number of pupils transported daily per bus—statewide	66

6. The 1969-70 budget of the Charlotte-Mecklenburg school system is \$57,711,344, of which nearly \$51,000,000 represents operational expense and between \$6,000,000 and \$7,000,000 represents capital outlay and debt service. These funds come from federal, state and county sources, as follows:

FEDERAL	STATE	COUNTY	TOTAL
\$2,450,000	\$29,937,044	\$25,324,300	\$57,711,344

The construction of school buildings is not included in these budget figures (see Plaintiffs' Exhibit 6).

7. State expenditures in the past ten years have usually not equalled appropriations. There has been a sizeable operating surplus in the state budget for every biennium since 1959-60 (State Budget, page 86).

8. The state superintendent of public instruction in his biennial report (Plaintiffs' Exhibit 12) for the years 1966-68 recommended that "city transportation should be pro-

Supplemental Findings of Fact dated March 21, 1970

vided on the same basis as transportation for rural children as a matter of equity."

9. The 1969 report of the Governor's Study Commission on the Public School System of North Carolina (Plaintiffs' Exhibit 13) recommended that transportation be provided for all school children, city as well as rural, on an equal basis. Signatory to that report was one of the present defendants, the state superintendent of public instruction.

10. The basic support for the public schools of the state comes from the State Legislature.

11. Some 5,000 children travel to and from school in Mecklenburg County each day in busses provided by contract carriers such as Charlotte City Coach Lines, Inc. (Morgan's deposition of February 25, 1970, page 36).

12. Upon the basis of data furnished by the school board and on the basis of statistics from the National Safety Council, it is found as a fact that travel by school bus is safer than walking or than riding in private vehicles.

13. Traffic is of course heavy all over the 540 square miles of the county. Motor vehicle registration for 1969 was 191,165 motor vehicles (161,678 automobiles and 29,487 trucks).

14. Many children eligible for transportation do not accept that transportation. Estimates have been made that this number of those who do not accept transportation is in the neighborhood of 50% of those who are eligible.

Supplemental Findings of Fact dated March 21, 1970

15. Approximately 5,000 children in the system attend school outside the school zone in which they reside. Although requested of the defendants by the court on March 7, 1970, information as to where these children go to school has not been forthcoming and the defendants have indicated that it is impossible to produce it.

16. As the state transportation regulations* are understood by the court, the state will bear its share (about half) of transportation costs for children who live more than $1\frac{1}{2}$ miles from their school, as follows:

- (a) All rural children, wherever they attend school;
- (b) All perimeter children (those living in territory annexed by the city before 1957), wherever they attend school; and
- (c) All inner city children assigned to schools in either the perimeter or the rural areas of the system.

17. The defendants submitted information on the number of children who live within $1\frac{1}{2}$ miles of the schools which are to be desegregated by zoning. This information shows that East Mecklenburg, Independence, North Mecklenburg, Olympic, South Mecklenburg and West Mecklenburg high schools, and Quail Hollow and Alexander junior high schools, with total student populations of 12,184, have in the aggregate only 96 students who live within $1\frac{1}{2}$ miles from the schools. Some 12,088 then are eligible for transportation. These same schools among them provide bus transportation for 5,349 students. This information illustrates the importance of the bus as one of the essential

* General Statutes of North Carolina, Chapter 115, §180-192.

Supplemental Findings of Fact dated March 21, 1970

elements in the whole plan of operation of the schools. It also shows the wide gap between those entitled to transportation and those who actually claim it. There is no black school in the system which depends very much upon the school bus to get the children to school. The total number of children transported in October, 1969, to schools identifiable as black was 541 out of total population in those black schools of over 17,000. Black schools, including the new black schools, have been located in black areas where busses would be unnecessary. Suburban schools, including the newest ones, have been located far away from black centers, and where they can not be reached by many students without transportation.

18. Bus travel in both urban and rural areas takes time. An analysis of the records of bus transportation, based upon the reports of school principals, is contained in the extensive exhibits bearing Plaintiffs' Exhibit numbers 22, 23, 24, 25, 26 and 27. For the month of October, 1969, by way of illustration, these principals' reports when analyzed show that out of some 279 busses carrying more than 23,000 children both ways each day:

The average one way trip is one hour and fourteen minutes;

80% of the busses require more than one hour for a one way trip;

75% of the busses make two or more trips each day; Average miles traveled by busses making one round trip per day is $34\frac{1}{2}$; and

Average bus mileage per day for busses making two trips is 47.99.

Supplemental Findings of Fact dated March 21, 1970

19. It was the testimony of Dr. Self and Dr. Finger, and the courts finds as a fact, that transportation provided by the school board's plans, which include narrow corridors several miles long and in places only one-half mile wide, proceeding in straight lines diagonally across streets and other obstacles, would be more expensive per capita than transportation under the satellite zone plan. The court plan calls for pick-ups to be made at a few points in each school district, as testified to by Dr. Self, and for non-stop runs to be made between satellite zones and principal zones. There will be no serious extra load on downtown traffic because there will be no pick-up and discharge of passengers in downtown traffic areas.

20. The court finds that from the standpoint of distance travelled, time en route and inconvenience, the children bussed pursuant to the court order will not as a group travel as far, nor will they experience more inconvenience than the more than 28,000 children who are already being transported at state expense.

21. On July 29, 1969 (pursuant to the court's April 23, 1969 order that they frame a plan for desegregation and that school busses could be used as needed), the defendants proposed a plan for closing seven inner-city black schools and bussing 4,200 students to outlying schools. The plan was approved. It had some escape clauses in it, and the defendants in practice added some others; but *as presented*, and as approved by the court, the "freedom of choice" contemplated was very narrowly restricted; and bussing of several hundred students has taken place under that plan.

22. Evidence of property valuations produced by the defendants shows that the value of the seven school proper-

Supplemental Findings of Fact dated March 21, 1970

ties closed under the July 29, 1969 plan, and now for the most part standing idle, was over three million dollars.

23. The all-black or predominantly black elementary schools which the board plan would retain in the system are located in an almost exclusively Negro section of Charlotte, which is very roughly triangular in shape and measures about four or five miles on a side. Some are air-conditioned and most are modern. Virtually none of their patrons now ride busses; the schools were located where the black patrons were or were expected to be. These schools, their completion dates, and representative academic performances of their sixth grade graduating classes are shown in the following table:

tion shown in:

The information shown in the first three columns below was taken from answers to interrogatories, Nos. 1-f, 1-g and 1-h, filed October 25, 1963.

GRADE 6 AVERAGE ACHIEVEMENT TEST SCORES, SHOWN IN GRADE EQUIVALENT (such as 6.2 = 6th grade, 2nd month), 1939-59.

YEAR BUILT	YEARS OF ADDITIONS	NO. OF MOBILE UNITS	WORD MEANING	PARAGRAPH MEANING	SPELLING	LANGUAGE	ACM (MATH)	ACN (MATH)	ADD (MATH)
1938	--	0	4.1	4.1	4.7	4.1	4.0	4.7	4.1
1951	1953 1957 1959	0	4.3	4.4	4.8	4.1	4.5	4.8	4.1
1952	1955 1955	1	4.0	4.0	4.6	3.6	3.9	4.4	3.7
1960	1964	0	4.0	4.2	4.5	3.9	3.9	4.5	4.1
1912	1930 1951 1968	0	4.0	4.1	4.8	3.6	3.9	4.6	4.2
1956	1958	5	4.4	4.4	4.3	4.2	4.3	4.3	4.1
1964	--	0	4.4	4.5	5.2	4.7	4.5	4.9	4.4
1957	1958 1964	5	4.4	4.7	4.8	4.3	4.4	4.8	4.4
1912	1934 1937	3	4.3	4.4	4.7	3.6	4.4	4.7	4.2

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Supplemental Findings of Fact dated March 21, 1970

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24. Both Dr. Finger and the school board staff appear to have agreed, and the court finds as a fact, that for the present at least, there is no way to desegregate the all-black schools in Northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion.

25. In the court's order of April 23, 1969, a suggestion was made that the board seek consultation or assistance from the office of Health, Education and Welfare. The board refused to do this, and as far as the court knows has not sought help from HEW.

26. Some 600 or more pupils transfer from one school to another or register for the first time into the system during the course of each month of the typical school year. It is the assignment of these children which is the particular subject of the reference in paragraph 13 of the order to the manner of handling assignments within the school year.

27. No plan for the complete desegregation of the schools was available to the court until the appointment of Dr. John A. Finger, Jr. and the completion of his tactful and effective work with the school administrative staff in December 1969 and January 1970. Dr. Finger has a degree in science from Massachusetts Institute of Technology and a doctor's degree in education from Harvard University, and twenty years' experience in education and educational problems. He has worked in a number of school desegregation cases and has a rare capacity for perception and solution of educational problems. His work with the staff had

Supplemental Findings of Fact dated March 21, 1970

the catalytic effect of freeing and inducing the staff to work diligently in the preparation of plans that would accomplish the result required, and which would be cohesive and efficient from an educational point of view.

28. Hearings on the "Finger" plans and on the board's proposed plans were conducted on February 2 and February 5, 1970. These plans may best be understood if they are considered in four divisions:

29. *The plan for senior high schools.*—The plan ordered to be put into effect May 4, 1970 is the board's own plan for desegregation of the senior high schools in all particulars except that the order calls for the assignment to Independence High School of some 300 black children. The board contends the high school plans will call for additional transportation for 2,497 students and will require 69 busses. The court is unable to accept this view of the evidence. All transportation under both the board and the court plan is covered by state law.

30. *The plan for junior high schools.*—A plan for junior high schools was prepared by the board staff and Dr. Finger and was submitted to the court as Dr. Finger's plan. The board submitted a separate plan. Both plans used the technique of re-zoning. The school board's plan after all of their re-zoning had been done left Piedmont Junior High School 90% black and shifting towards 100% black. The plan designed by Dr. Finger with staff assistance included zoning in such a way as to desegregate all the schools. This zoning was aided by a technique of "satellite" districts. For example, black students from satellite districts in the central city area around Piedmont Courts will be assigned to Alexander Graham Junior High,

Supplemental Findings of Fact dated March 21, 1970

which is predominantly white. Black students from the area around Northwest Junior High School (all-black) will be similarly transferred to Wilson Junior High, northwest of the air port. These one-way transfers, essentially identical in nature to the board's July 29, 1969 plan, will result in the substantial desegregation of all the junior high schools, which are left under this plan with black student populations varying from 9% at J. H. Gunn to 33% at Alexander and Randolph.

The court order did not require the adoption of the Finger plan. In paragraph 19 of the order the board were given four choices of action to complete the process of desegregating the junior high schools. These choices were (1) Re-zoning; (2) Two-way transporting of pupils between Piedmont and white schools; (3) Closing Piedmont and assigning the black students to other junior high schools; or (4) Adoption of the Finger plan.

The board elected to adopt and did adopt the Finger plan by resolution on February 9, 1970.

The defendants have offered figures on the basis of which they ask the court to find that 4,359 students will have to be transported under the junior high school plan and that 84 busses will be required. The court is unable to find that these contentions are borne out by the statistics and other evidence offered.

Dr. Self, the school superintendent, and Dr. Finger, the court appointed expert, both testified that the transportation required to implement the plan for junior highs would be less expensive and easier to arrange than the transportation proposed under the board plan. The court finds this to be a fact.

Two schools may be used to illustrate this point. Smith Junior High under the board plan would have a contigu-

Supplemental Findings of Fact dated March 21, 1970

ous district six miles in length extending $4\frac{1}{2}$ miles north from the school itself. The district throughout the greater portion of its length is one-half mile wide and all roads in its one-half mile width are diagonal to its borders. East-way Junior High presents a shape somewhat like a large wooden pistol with a fat handle surrounding the school off Central Avenue in East Charlotte and with a corridor extending three miles north and then extending at right angles four miles west to draw students from the Double Oaks area in northwest Charlotte. Obviously picking up students in narrow corridors along which no major road runs presents a considerable transportation problem.

The Finger plan makes no unnecessary effort to maintain contiguous districts, but simply provides for the sending of busses from compact inner city attendance zones, non-stop, to the outlying white junior high schools, thereby minimizing transportation tie-ups and making the pick-up and delivery of children efficient and time-saving.

It also is apparent that if the board had sought the minimum departure from its own plan, such minimum result could have been achieved by accepting the alternative of transporting white children into and black children out of the Piedmont school until its racial characteristics had been eliminated.

In summary, as to junior high schools, the court finds that the plan chosen by the board and approved by the court places no greater logistic or personal burden upon students or administrators than the plan proposed by the school board; that the transportation called for by the approved plan is not substantially greater than the transportation called for by the board plan; that the approved plan will be more economical, efficient and cohesive and easier to administer and will fit in more nearly with the

Supplemental Findings of Fact dated March 21, 1970

transportation problems involved in desegregating elementary and senior high schools, and that the board made a correct administrative and educational choice in choosing this plan instead of one of the other three methods.

31. *The plan for elementary schools.*—The elementary school desegregation program is best understood by dividing it into two parts: (a) The 27 schools being desegregated by zoning; and (b) The 34 schools being desegregated by grouping, pairing and transportation between school zones.

32. *The re-zoned group.* Two plans were submitted to the court. The school board plan was prepared for the board by its staff. It relied entirely upon zoning with the aid of some computer data supplied by Mr. Weil, a board employed consultant. It did as much as could reasonably be accomplished by re-zoning school boundaries. It would leave nine elementary schools 83% to 100% black. (These schools now serve 6,462 students—over half the black elementary pupils.) It would leave approximately half the white elementary students attending schools which are 86% to 100% white. In short, it does not tackle the problem of the black elementary schools in northwest Charlotte.

The "Finger plan" was the result of nearly two months of detailed work and conference between Dr. Finger and the school administrative staff. Dr. Finger prepared several plans to deal with the problem within the guidelines set out in the December 1, 1969 order. Like the board plan, the Finger plan does as much by re-zoning school attendance lines as can reasonably be accomplished. However, unlike the board plan, it does not stop there. It goes further and desegregates all the rest of the elementary schools by the technique of grouping two or three outlying schools with one black inner city school; by transporting black

Supplemental Findings of Fact dated March 21, 1970

students from grades one through four to the outlying white schools; and by transporting white students from the fifth and sixth grades from the outlying white schools to the inner city black school.

The "Finger plan" itself in the form from which in principle the court approved on February 5, 1970, was prepared by the school staff and was filed with the court by representatives of the school board on February 2, 1970. It represents the combined thought of Dr. Finger and the school administrative staff as to a valid method for promptly desegregating the elementary schools, if such desegregation is required by law to be accomplished.

This plan was drafted by the staff and by Dr. Finger in such a way as to make possible immediate desegregation if it should be ordered by an appellate court in line with then current opinions of appellate courts.

The testimony of the school superintendent, Dr. Self, was, and the court finds as a fact, that the zoning portion of the plan can be implemented by April 1, 1970 along educationally sound lines and that the transportation problems presented by the zoning portion of the plan can be solved with available resources.

The court has reviewed the statistics supplied to it by the original defendants with regard to elementary schools to be desegregated by re-zoning. These schools have been zoned with compact attendance areas and with a few exceptions they have no children beyond 1½ miles distance from the school to which they are assigned. Although some transportation will be required, the amount is not considerable when weighed against the already existing capacity of the system. The court specifically finds that not more than 1,300 students will require transportation under this portion of the program and that the bus trips would be so

Supplemental Findings of Fact dated March 21, 1970

short and multiple bus runs so highly practical that 10 school busses or less will be adequate.

33. *The pairing and grouping of 34 elementary schools.*—This part of the plan as previously described would group an inner city black school with two or more outlying white schools and assign children back and forth between the two so that desegregated fifth and sixth grades would be established in the presently black schools and desegregated grades one through four would be established in the presently white schools. The estimate of Dr. Finger and Dr. Self, the superintendent, was that this program would require transporting roughly 5,000 white pupils of fifth and sixth grade levels into inner city schools. The board in its latest estimate puts the total figure at 10,206. Just what is the net additional number of students to be transported who are not already receiving transportation is open to considerable question.

34. *The Discount Factors.*—The court accepts at face value, for the most part, the defendants' evidence of matters of independent fact, but is unable to agree with the opinions or factual conclusions urged by counsel as to the numbers of additional children to be transported, and as to the cost and difficulty of school bus transportation. The defendants in their presentation have interpreted the facts to suggest inconvenient and expensive and burdensome views of the court's order. Their figures must be discounted in light of various factors, all shown by the evidence, as follows:

(a) Some 5,000 children daily are provided transportation on City Coach Lines, in addition to the

Supplemental Findings of Fact dated March 21, 1970

23,600 and more who ride school busses. These have not been considered in the defendants' calculations.

(b) Not all students eligible for transportation actually accept it. The board's estimates of transportation, however, assume that transportation must be provided daily for all eligible students.

(c) Not all registered students attend all schools every day. The board's figures appear to assume they do. Statewide, average daily attendance is less than 94% of initial registration.

(d) The present average number of students transported round trip, to and from school, per bus, per day, is more than 83. The board's estimates, however, are based on the assumption that they can transport only 44 or 46 pupils, round trip, per bus, per day when the bus serves a desegregation role.

(e) Busses now being used make an average of 1.8 trips per day. Board estimates to implement the desegregation plan contemplate only one trip per bus per day!

(f) The average one-way bus trip in the system today is over 15 miles in length and takes nearly an hour and a quarter. The average length of the one-way trips required under the court approved plan for elementary students is less than seven miles, and would appear to require not over 35 minutes at the most, because no stops will be necessary between schools.

(g) The board's figures do not contemplate using busses for more than one load of passengers morning or afternoon. Round trips instead of one-way trips morning and afternoon could cut the bus requirements sharply.

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(h) The number of busses required can be reduced 35% to 50% by staggering the opening and closing hours of schools so that multiple bus trips can be made. This method is not considered in the board's estimates, according to testimony of J. D. Morgan, bus superintendent.

(i) Substantial economies may reasonably be expected when all phases of the bussing operation have been coordinated instead of being considered separately.

(j) In estimating how many children live more than a mile and a half from schools, and therefore are entitled to transportation, the board's transportation people have used some very short measurements. As the court measures the maps, very few of the students in the re-zoned elementary schools, for example, live more than $1\frac{1}{2}$ miles from their assigned schools. If the board wants to transport children who live less than $1\frac{1}{2}$ miles away they may, but if they do, it is because of a board decision rather than because of the court's order.

(k) Transportation requirements could be reduced by raising the walking distance temporarily from $1\frac{1}{2}$ to perhaps $1\frac{3}{4}$ miles. This has apparently not been taken into account.

(l) Testimony of J. D. Morgan shows that busses can be operated at a 25% overload. Thus a 60-passenger bus (the average size) can if necessary transport 75 children. Some busses in use today transport far more.

35. Findings of Fact as to Required Transportation.—
After many days of detailed study of maps, exhibits and

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statistics, and after taking into account all the evidence, including the "discount factors" mentioned above, the court finds as facts that the maximum number of additional children who may conceivably require transportation under the court ordered plans, and the maximum numbers of additional busses needed are as follows:

	<i>Net Additional Transportees</i>	<i>Number of Busses Needed</i>
Senior Highs	1,500	20
Junior Highs	2,500	28
Elementaries:		
Re-zoned	1,300	10
Paired and Grouped	8,000	80
	<hr/>	<hr/>
Totals	13,300	138

36. These children (all but a few hundred at Hawthorne, Piedmont, Alexander Graham, Myers Park High School, Eastover, West Charlotte and a few other places), *if assigned to the designated schools, are entitled to transportation under existing state law, independent of and regardless of this court's order respecting bussing.*

37. The court also finds that the plan proposed by the board would have required transportation for at least 5,000 students in addition to those now being transported.

38. *Separability.*—Each of the four parts of the desegregation plan is separable from the other. The re-zoning of elementaries can proceed independent of the pairing and grouping. The pairing and grouping can take place independent of all other steps. *The implementation of the*

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pairing and grouping plan itself can be done piecemeal, one group or several groups at a time, as transportation becomes available. It was planned that way.

39. *The Time Table.*—The February 5, 1970 order followed the time table requested by the defendants. At the February 2 hearing, the school board attorney requested until April 1, 1970 to desegregate the elementary schools (T. 20); he requested that high school seniors be allowed to graduate where they are (T. 21); he proposed continuing junior high students and grades 10 and 11 in their present schools until the third week before the end of school (T. 21). The request of Dr. Self, the school superintendent, was identical as to elementaries and 12th graders; he preferred to transfer 10th and 11th graders about two weeks before school was over (T. 95). Availability of transportation was the only caveat voiced at the hearing.

40. The February 5 order expressly provided that "racial balance" was not required. The percentage of black students in the various parts of the plans approved vary from 3% black at Bain to 41% black at Cornelius.

41. *Cost.*—Busses cost around \$5,400.00 each, varying according to size and equipment. Total cost of 138 busses, if that many are needed, would therefore be about \$745,200.00. That is much less than one week's portion of the Mecklenburg school budget. Busses last 10 to 15 years. The state replaces them when worn out.

Some additional employees will be needed if the transportation system is enlarged.

Defendants have offered various estimates of large increased costs for administration, parking, maintenance, driver education and other items. If they choose to incur

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excess costs, the court can not prevent it. However, the evidence shows that school bus systems in Charlotte and other urban North Carolina counties tend to operate at lower costs per student than rural systems. Adding a larger number of short-range capacity loads should not tend to increase the present overall per capita cost of \$40 a year.

It is the opinion and finding of the court that the annual transportation cost per student, including amortization of the purchase price of the busses, will be at or close to \$40.00, and that the total annual cost, which is paid about half by the state and half by the county, of implementing this order, will not exceed the following:

For zoned Elementaries	(1,300)	\$ 52,000
For paired Elementaries	(8,000)	320,000
For Junior Highs	(2,500)	100,000
For Senior Highs	(1,500)	60,000
		<hr/>
		\$532,000*

41. *Availability.*—The evidence shows that the defendant North Carolina Board of Education has approximately 400 brand new school busses and 375 used busses in storage, awaiting orders from school boards. None had been sold at last report. The state is unwilling to sell any of them to Mecklenburg because of the "anti-bussing" law. No orders for busses have been placed by the school board.

If orders to manufacturers had been placed in early February, delivery in 60 or 90 days could have been anticipated. The problem is not one of availability of busses

* The local system's share of this figure would be \$266,000.00, which at current rates is only slightly more than the annual interest or the value of the \$3,000,000.00 worth of school properties closed in 1969.

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but of unwillingness of Mecklenburg to buy them and of the state to furnish or make them available until final decision of this case.

This the 21 day of March, 1970.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

Supplemental Memorandum dated March 21, 1970

Pursuant to the order of the Fourth Circuit Court of Appeals, filed March 5, 1970, this memorandum is issued.

Previous orders cover more than one hundred pages. The motions and exhibits and pleadings and evidence number thousands of pages, and the evidence is several feet thick. It may be useful to reviewing authorities to have a brief summary of the case in addition to the supplemental facts on the questions of transportation.

Before 1954, the schools in Charlotte and Mecklenburg County were segregated by state law. The General Assembly, in response to *Brown v. Board of Education*, adopted the Pupil Assignment Act of 1955-56, North Carolina General Statutes, §115-176, which was quoted in the April 23, 1969 order and which is still the law of North Carolina. It provides that school boards have full and final authority to assign children to schools and that no child can be enrolled in nor attend a school to which he has not been so assigned.

"Freedom of choice" to pick a school has never been a right of North Carolina public school students. It has been a courtesy offered in recent years by some school boards, and its chief effect has been to preserve segregation.

Slight token desegregation of the schools occurred in the years following *Brown*. The Mecklenburg County and the Charlotte City units were merged in 1961.

This suit was filed in 1965, and an order was entered in 1965 approving the school board's then plan for desegregation, which was substantially a freedom of choice plan coupled with the closing of some all-black schools.

There was no further court action until 1968, when a motion was filed requesting further desegregation. Most

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white students still attended "white" schools and most black students still attended "black" schools. The figures on this subject were analyzed in this court's opinion of April 23, 1969 (300 F.Supp. 1358 (1969)), in which the background and history of local segregation and its continuing discriminatory nature were analyzed at length. In that order the court ruled that substantial progress had been made and that many of the alleged acts of discrimination were not proved.

However, certain significant findings and conclusions were made which have been of record without appeal for eleven months. These include the following:

1. The schools were found to be unconstitutionally segregated.

2. Freedom of choice had failed; no white child had chosen to attend any black school, and freedom of choice promoted rather than reduced segregation.

3. The concentration of black population in northwest Charlotte and the school segregation which accompanied it were primarily the result of discriminatory laws and governmental practices rather than of natural "neighborhood" forces. (This finding was reaffirmed in the order of November 7, 1969.)

4. The board had located and controlled the size and population of schools so as to maintain segregation.

5. The plan approved and put into effect in 1965 had not eliminated unlawful segregation.

6. The defendants operate a sizeable fleet of busses, serving over 23,000 children at an average annual cost (to state and local governments combined) of not more than \$40 per year per pupil.

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7. Transportation by bus is a legitimate tool for school boards to use to desegregate schools.

8. Faculties were segregated, and should be desegregated.

9. Under *Green v. New Kent County School Board*, 391 U.S. 430 (1968), there was now an active duty to eliminate segregation.

The board was directed to submit a plan to desegregate the schools.

The order produced a great outcry from school board members and others. It also produced a plan which called for the closing of Second Ward, the only black high school located near a white neighborhood; and it produced no rezoning, no elimination of gerrymandering, and only minor changes in the pupil assignment plan. It did produce an undertaking to desegregate the faculties. The plan was reviewed in the court order of June 20, 1969, in which the court approved the provision for offering transportation to children transferring from majority to minority situations and directed the preparation of a plan for pupil desegregation.

The court also specifically found that gerrymandering had been taking place; and several schools were cited as illustrations of gerrymandering to promote or preserve segregation.

In June of 1969, pursuant to the hue and cry which had been raised about "bussing," Mecklenburg representatives in the General Assembly of North Carolina sought and procured passage of the so-called "anti-bussing" statute, N.C. G.S. 115-176.1. That statute reads as follows:

"§115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited. —No person shall be refused admission into or be excluded from any public school in this State on account of

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race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creed, colors or national origins from the community.

"Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

"The provisions of this article shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment .

"The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible

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to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit. (1969, c. 1274.)"

The board's next plan was filed July 29, 1969, and was approved for 1969-70 by the order of August 15, 1969. The August 15 order contained the following paragraph:

"The most obvious and constructive element in the plan is that the School Board has reversed its field and has accepted its affirmative constitutional duty to desegregate pupils, teachers, principals and staff members 'at the earliest possible date.' It has recognized that where people live should not control where they go to school nor the quality of their education, and that transportation may be necessary to comply with the law. It has recognized that easy methods will not do the job; that rezoning of school lines, perhaps wholesale; pairing, grouping or clustering of schools; use of computer technology and all available modern business methods can and must be considered in the discharge of the Board's constitutional duty. This court does not take lightly the Board's promises and the Board's undertaking of its affirmative duty under the Constitution and accepts these assurances at face value. They are, in fact, the conclusions which necessarily follow when any group of women and men of good faith seriously study this problem *with knowledge of the facts of this school system and in light of the law of the land.*"

The essential action of the board's July 29, 1969 plan was to close seven inner-city black schools and to re-assign their pupils to designated white suburban schools, and to

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transport these children by bus to these suburban schools. In addition, it was proposed to re-assign 1,245 students from named black schools to named suburban white schools and provide them transportation.

The total of this one-way transportation of black students only to white schools under this plan was stated to be 4,245 children.

No problem of transportation or other resources was raised or suggested.

The evidence of the defendants is that the property value of the schools thus closed exceeds \$3,000,000. For the most part, that property stands idle today.

The "anti-bussing" law was not found by the board to interfere with this proposed wholesale re-assignment and "massive bussing," of black children only, for purposes of desegregation.

The plan, by order of August 15, 1969, was approved on a one-year basis only, and the board was directed to prepare and file by November 17, 1969, a plan for complete desegregation of all schools, to the maximum extent possible, by September 1, 1970.

The defendants filed a motion asking that the deadline to prepare a plan be extended from November 17, 1969, to February 1, 1970. The court called for a report on the results of the July 29, 1969 plan. Those results were outlined in this court's order of November 7, 1969. In substance, the plan which was supposed to bring 4,245 children into a desegregated situation had been handled or allowed to dissipate itself in such a way that only about one-fourth of the promised transfers were made; and as of now only 767 black children are actually being transported to suburban white schools instead of the 4,245 advertised when the plan was proposed by the board. (See defendants'

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March 13, 1970 response to plaintiffs' requests for admissions.)

The meager results of eight months of planning were further set out in this court's November 7, 1969 order, as follows:

"THE SITUATION TODAY

"The following table illustrates the racial distribution of the present school population:

SCHOOLS READILY IDENTIFIABLE AS WHITE

% WHITE	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS		
		WHITE	BLACK	TOTALS
100%	9	6,605	2	6,607
98-99%	9	4,801	49	4,850
95-97%	12	10,836	505	11,341
90-94%	17	14,070	1,243	15,313
86-89%	10	8,700	1,169	9,869
	<hr/> 57	<hr/> 45,012	<hr/> 2,968	<hr/> 47,980

SCHOOLS READILY IDENTIFIABLE AS BLACK

% BLACK	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS		
		WHITE	BLACK	TOTALS
100%	11	2	9,216	9,218
98-99%	5	41	3,432	3,473
90-97%	3	121	1,297	1,418
56-89%	6	989	2,252	3,241
	<hr/> 25	<hr/> 1,153	<hr/> 16,197	<hr/> 17,350

SCHOOLS NOT READILY IDENTIFIABLE BY RACE

% BLACK	NUMBER OF SCHOOLS	NUMBERS OF STUDENTS		
		WHITE	BLACK	TOTALS
32-49%	10	4,320	2,868	7,188
17-20%	8	5,363	1,230	6,593
22-29%	6	3,980	1,451	5,431
	<hr/> 24	<hr/> 13,663	<hr/> 5,549	<hr/> 19,212
TOTALS:	106	59,828	24,714	84,542

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Some of the data from the table, re-stated, is as follows:

Number of schools	106
Number of white pupils	59,828
Number of black pupils	24,714
Total pupils	84,542
Per cent of white pupils	71%
Per cent of black pupils	29%
Number of "white" schools	57
Number of white pupils in those schools	45,012
Number of "black" schools	25
Number of black pupils in those schools	16,197
Number of schools not readily identifiable by race	24
Number of pupils in those schools	19,212
Number of schools 98-100% black	16
Negro pupils in those schools	12,648
Number of schools 98-100% white	18
White pupils in those schools	11,406

"Of the 24,714 Negroes in the schools, something above 8,500 are attending 'white' schools or schools not readily identifiable by race. *More than 16,000, however, are obviously still in all-black or predominantly black schools.* The 9,216 in 100% black situations are considerably more than the number of black students in Charlotte in 1954 at the time of the first *Brown* decision. The black school problem has not been solved.

"The schools are still in major part segregated or 'dual' rather than desegregated or 'unitary.'

"The black schools are for the most part in black residential areas. However, that does not make their segregation constitutionally benign. In previous opinions the facts

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respecting their locations, their controlled size and their population have already been found. Briefly summarized, these facts are that the present location of white schools in white areas and of black schools in black areas is the result of a varied group of elements of public and private action, all deriving their basic strength originally from public law or state or local governmental action. These elements include among others the legal separation of the races in schools, school busses, public accommodations and housing; racial restrictions in deeds to land; zoning ordinances; city planning; urban renewal; location of public low rent housing; and the actions of the present School Board and others, before and since 1954, in locating and controlling the capacity of schools so that there would usually be black schools handy to black neighborhoods and white schools for white neighborhoods. There is so much state action embedded in and shaping these events that the resulting segregation is not innocent or '*de facto*,' and the resulting schools are not 'unitary' or desegregated.

"FREEDOM OF CHOICE

"Freedom of choice has tended to perpetuate segregation by allowing children to get out of schools where their race would be in a minority. The essential failure of the Board's 1969 pupil plan was in good measure due to freedom of choice.

"As the court recalls the evidence, it shows that *no white students have ever chosen to attend any of the 'black' schools.*

"Freedom of choice does not make a segregated school system lawful. As the Supreme Court said in *Green v. New Kent County*, 391 U. S. 430 (1968):

"* * * If there are reasonably available other ways, such for illustration as zoning, promising speedier and

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more effective conversion to a unitary, nonracial school system, "freedom of choice" must be held unacceptable.'

"Redrawing attendance lines is not likely to accomplish anything stable toward obeying the constitutional mandate as long as freedom of choice or freedom of transfer is retained. The operation of these schools for the foreseeable future should not include freedom of choice or transfer except to the extent that it reduces segregation, although of course the Board under its statutory power of assignment can assign any pupil to any school for any lawful reason."

(The information on the two previous pages essentially describes the condition in the Charlotte-Mecklenberg schools today.)

Meanwhile, on October 29, 1969, the Supreme Court in *Alexander v. Holmes County*, 396 U. S. 19 (1969), ordered thirty Mississippi school districts desegregated immediately and said that the Court of Appeals

"... should have denied all motions for additional time because continued operation of *segregated schools* under a standard of allowing all deliberate speed for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court, the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. *Griffin v. School Board*, 377 U.S. 218, 234 (1964); *Green v. School Board of New Kent County*, 391 U. S. 430, 439, 442 (1968)." (Emphasis added.)

Because of this action and decision of the Supreme Court, this court did not feel that it had discretion to grant the requested time extension, and it did not do so.

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The board then filed a further desegregation plan on November 17, 1969. The plan was reviewed in the order of December 1, 1969. It was not approved because it rejected the goal of desegregating all the schools or even all the black schools. It proposed to concentrate on methods such as rezoning and freedom of choice and to discard any consideration of pairing, grouping, clustering and transporting or other methods. It proposed to retain numerous all-black schools.

The performance results, set out in previous orders, show that the all-black schools lag far behind white schools or desegregated schools.

The court, in an order dated December 1, 1969, reviewed the recent decisions of courts and laid out specific guidelines for the preparation of a plan which would desegregate the schools. A consultant, Dr. John A. Finger, Jr., was appointed to draft a plan for the desegregation of the schools for use of the court in preparing a final order. The school board was authorized and encouraged to prepare another plan of its own if it wished.

Dr. Finger worked with the school board staff members over a period of two months. He drafted several different plans. When it became apparent that he could produce and would produce a plan which would meet the requirements outlined in the court's order of December 1, 1969, the school staff members prepared a school board plan which would be subject to the limitations the board had described in its November 17, 1969 report. The result was the production of two plans—the board plan and the plan of the consultant, Dr. Finger.

The detailed work on both final plans was done by the school board staff.

The high school plan prepared by the board was recommended by Dr. Finger to the court with one minor change.

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This change involved transporting three hundred inner city black children to Independence High School. As to high school students, then, the plan which was ordered by the court to take effect on May 4, 1970 is the school board's plan, with transportation added for three hundred students. The proportion of black children in the high schools varies from 17% to 36% under this plan.

For junior high schools, separate plans were prepared by Dr. Finger and by the board. The board plan would have used zoning to desegregate all the black junior high schools except Piedmont, which it would have left 90% black. The Finger plan employed re-zoning as far as appeared feasible, and then provided for transportation between inner city black zones and outlying white schools to desegregate all the schools, including Piedmont.

The court offered the school board the options of (1) re-zoning, or (2) closing Piedmont, or (3) two-way transport of students between Piedmont and other schools, or (4) accepting the Finger plan which desegregates all junior high schools.

The board met and elected to adopt the Finger plan rather than close Piedmont or rearrange their own plan. The Finger plan may require the transportation of more students than the board plan would have required, but it handles the transportation more economically and efficiently, and does the job of desegregating the junior high schools. The percentage of black students in the junior high schools thus constituted will vary from 9% to 33%.

The transportation of junior high students called for in the plan thus adopted by the board pursuant to the court order of February 5, 1970, is essentially the same sort that was adopted without hesitation for 4,245 black children when the seven black inner city schools were closed in 1969.

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For elementary schools the problem is more complicated. Dr. Finger prepared several plans to desegregate the elementary schools and reviewed them with the school staff. It was apparent that even the gerrymandering considered by the board could not desegregate all the elementary schools, and that without transportation there is no way by which in the immediate future the continuing effects of state imposed segregation can be removed. Dr. Finger prepared a plan which proposed re-zoning of as many schools as could be desegregated by re-zoning and which then proposed pairing or grouping of schools. By pairing or grouping, a black school and one or more white schools could be desegregated by having grades one through four, black and white, attend the white schools, and by having grades five and six, black and white, attend the black school, and by providing transportation where needed to accomplish this.

The original Finger plan proposed to group black inner city schools with white schools mostly in the south and southeast perimeter of the district.

The school staff drafted a plan which went as far as they could go with re-zoning and stopped there, leaving half the black elementary children in black schools and half the white elementary children in white schools.

In other words, both the plan eventually proposed by the school board and the plan proposed by Dr. Finger went as far as was thought practical to go with re-zoning. The distinction is that the Finger plan goes ahead and does the job of desegregating the black elementary schools, whereas the board plan stops half way through the job.

In its original form the Finger plan for elementary schools would have required somewhat less transportation than its final form, but would have been more difficult to

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put into effect rapidly. The pressure of time imposed by decisions of the Supreme Court and other appellate courts had become such that there was concern lest there be an order from one of the appellate courts for immediate February or March desegregation of the entire system. The school staff therefore, based on Finger's guidelines, prepared a final draft of his plan incorporating pairing, grouping and transporting on a basis which would better allow for early implementation with a minimum of administrative complications, in lieu of his original plan.

The result is that the plan for elementary schools which is known as the "Finger plan" was prepared in detail by the school staff and incorporates the thought and work of the staff on the most efficient method to desegregate the elementary schools.

The time table originally adopted by this court in April of 1969 was one calling for substantial progress in 1969 and complete desegregation by September 1970. However, on October 29, 1969, in *Alexander v. Holmes County*, the Supreme Court ordered immediate desegregation of several Deep South school systems and said that the Court of Appeals "*should have denied all motions for additional time.*" The Supreme Court adhered to that attitude in all decisions prior to this court's order of February 5, 1970. In *Carter v. West Feliciana Parish*, — U. S. — (January 14, 1970), they reversed actions of the Fifth Circuit Court of Appeals which had extended time for desegregating hundreds of thousands of Deep South children beyond February 1, 1970. In *Nesbit v. Statesville, et al.*, 418 F.2d 1040, the Fourth Circuit Court of Appeals on December 2, 1969, ordered the desegregation by January 1, 1970, of schools in Statesville, Reidsville and Durham, North Carolina. Referring to the *Alexander v. Holmes County* decision, the Fourth Circuit said:

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"The clear mandate of the Court is immediacy. Further delays will not be tolerated in this circuit." (Emphasis added.)

In that opinion the Court directed this district court to adopt a plan on December 19, 1969, for the City of Statesville, effective January 1, 1970, which *"must provide for the elimination of the racial characteristics of Morningside School by pairing, zoning or consolidation. . . ."* As to Durham and Halifax, Virginia, courts were ordered to accomplish the necessary purpose by methods including pairing, zoning, reassignment or *"any other method that may be expected to work."*

In *Whittenburg v. Greenville County, South Carolina*, — F.2d — (January 1970), the Fourth Circuit Court of Appeals, citing *Holmes County* and *Carter v. West Feliciana Parish*, said:

"More importantly the Supreme Court said emphatically it meant precisely what it said in Alexander that general reorganization of school systems is requisite now, that the requirement is not restricted to the school districts before the Supreme Court in Alexander, and that Courts of Appeals are not to authorize the postponement of general reorganization until September 1970." (Emphasis added.)

As to *Greenville*, in a case involving 58,000 children, the Court said that

"The plan for Greenville may be based upon the revised plan submitted by the school board or upon any other plan that will create a unitary school system." (Emphasis added.)

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The Court further said:

"The District Court's order shall not be stayed pending any appeal which may be taken to this court, but, in the event of an appeal, modification of the order may be sought in this court by a motion accompanied by a request for immediate consideration."

Upon rehearing the Fourth Circuit Court of Appeals said on January 26, 1970:

"The proper functioning of our judicial system requires that subordinate courts and public officials faithfully execute the orders and directions of the Supreme Court. Any other course would be fraught with consequences, both disastrous and of great magnitude. If there are appropriate exceptions, if the District Courts and the Courts of Appeals are to have some discretion to permit school systems to finish the current 1969-1970 school year under current methods of operation, the Supreme Court may declare them, but no member of this court can read the opinions in CARTER as leaving any room for the exercise by this court in this case of any discretion in considering a request for postponement of the reassignment of children and teachers until the opening of the next school year."

"For these reasons the petition for rehearing and for a stay of our order must be denied." (Emphasis added.)

The above orders of the Supreme Court and the Fourth Circuit Court of Appeals are the mandates under which this court had to make a decision concerning the plan to be adopted and the time when the plan should be implemented.

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This court conducted hearings on February 2 and February 5, 1970, upon the content and the effective date of the plans for desegregation of the Charlotte-Mecklenburg schools. On February 2nd, Mr. Waggoner, the attorney for the school board, requested the court to adopt a time table under which the elementary schools would be desegregated immediately after Easter (about April 1st) and the junior highs and senior highs would be desegregated in May, about the third week before the end of school. Dr. Self, the school superintendent, requested essentially the same time table.

Dr. Self testified that the job could be done as to all students in the times requested if transportation could be arranged; and he and Mr. Waggoner indicated that by staggering hours of school and by effective use of busses the transportation problem might be solved.

The Supreme Court in *Griffin v. Prince Edward County*, 377 U. S. 218 (1964), had held that a school board could and should validly be required by a district court to re-open a whole county school system rather than keep it closed to avoid desegregation, even though levying taxes and borrowing money might be necessary.

In view of the decisions above mentioned and the facts before the court, it appeared to this court that the undoubted difficulties and inconveniences and expense caused by transferring children in mid-year to schools they did not choose would have to be outweighed by the mandates of the Supreme Court and the Fourth Circuit Court of Appeals and that this court had and has a duty to require action now.

On February 5, 1970, therefore, a few days after the second *Greenville* opinion, this court entered its order for desegregation of the schools.

Supplemental Memorandum dated March 21, 1970

The time table set in the February 5, 1970 order is precisely the time table suggested by Mr. Waggoner, the attorney for the defendants, in the record of the February 2, 1970 hearing.

Paragraph 16 of the February 5, 1970 order reads:

"The duty imposed by the law and by this order is the desegregation of schools and the maintenance of that condition. The plans discussed in this order, whether prepared by Board and staff or by outside consultants, such as computer expert, Mr. John W. Weil, or Dr. John A. Finger, Jr., are illustrations of means or partial means to that end. The defendants are encouraged to use their full 'know-how' and resources to attain the results above described, and thus to achieve the constitutional end by any means at their disposal. The test is not the method or plan, but the results."

The above summary is an outline only of the most significant steps which have brought this case to its present position. Details of all the developments mentioned in this summary appear in previous orders and in the lengthy evidence.

Pursuant to the direction of the Circuit Court, this court has made and is filing contemporaneously herewith supplemental detailed findings of fact bearing on the transportation question.

This the 21st day of March, 1970.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Objections and Exceptions to Supplementary Findings
of Fact of March 21, 1970, and Motion for
Modification and Clarification Thereof**

The defendants, the Charlotte-Mecklenburg Board of Education and the individual Board members, object and except to certain supplementary findings of fact entered by the Court on March 21, 1970, and further move for amendment and clarification thereof.

The findings objected and excepted to and for which clarification is needed are set out below with paragraph numbers corresponding to those of the supplementary findings of fact.

1. The Court's order of February 5, 1970, contains a finding that is not supported in the record. The Court finds that the average cost for transportation per year per pupil is approximately \$40 per year with local funds and state funds bearing approximately half the cost. This is at variance with the evidence in this matter. This finding should be amended to reflect that the approximate annual cost of transporting a pupil, without regard to depreciation or certain administrative costs, is slightly in excess of \$20 per year for which the local school system receives almost total reimbursement from the state which receives a portion of its funds from the taxpayers of Mecklenburg County.

2. This finding relating to transportation to public schools by the state during the 1968-1969 school year reflects that 70.9 per cent elementary and 29.1 per cent high school students account for all transportation. The record is silent with reference to junior high schools and it is submitted that grades 7 and 8 are also included with the elementary students. In other words, the reporting in plain-

*Objections and Exceptions to Supplementary Findings
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tiffs' Exhibit 15 is based on an 8-4 school system whereas the Mecklenburg system is based on a 6-3-3 system. It would therefore appear that of the 55 per cent of the average daily attendance in public schools transported, approximately 50 per cent would represent grades 1 through 6.

The finding "—plus another 5,000, whose fares are paid on the Charlotte City Coach Lines." leaves the impression that the public school system reimburses students riding on buses operated by the Charlotte City Coach Lines. There is no evidence to support this finding and it is not true in fact.

4. The statement "pupils whose fares are paid on Charlotte City Coach Lines, Inc.—5,000" is inaccurate for the reasons stated in Paragraph 2 above.

The line "additional costs (1968-1969) per pupil to state—\$19.92" should be changed to "reimbursement to school system (1968-1969) per pupil by state—\$19.92."

The line "total annual cost per pupil transported—\$39.92" should be changed by amending the figure to approximately \$20.00.

6. The Court makes the finding with reference to the 1969-70 budget of the Charlotte-Mecklenburg school system, but fails to further find that all funds are fully committed to fixed line items of the budget and that the school system has no surplus; in fact, the budgetary request was substantially reduced by the County Commissioners. (Report to the Court with reference to compensatory education requests). Furthermore, that upon official request of the Board of Education for additional funds with which to acquire transportation equipment, the Board of County Com-

*Objections and Exceptions to Supplementary Findings
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missioners of Mecklenburg County has advised the Board of Education that no additional funds will be available for the operation of schools during the current fiscal year which expires on June 30, 1970, and therefore, approximately five-sixths of the budget had been expended at this time.

7. This paragraph leaves the implication that state funds could be used for capital outlay. To clear up this implication, the Court should find that state law requires local school boards to pay for additional school buses required and that the state will replace them upon obsolescence some twelve to fourteen years later, and further that the state will pay approximately \$20 per year toward transportation of each child eligible under state law.

11. The finding of the Court with reference to transportation of 5,000 children by contract carriers is erroneous. Mr. Morgan in his deposition of February 25, 1970, on page 36, plainly stated that students were being transported on Charlotte City Coach Lines at a reduced fare. Mr. Morgan then inquired of Deaton that in the event a contract could be entered for transportation of students, would Charlotte City Coach Lines transport on the same reduced fare, to which Mr. Deaton replied in the negative. See also affidavit of Robert L. Deaton, Assistant General Manager of Charlotte City Coach Lines, Inc. dated February 10, 1970.

16. This paragraph should be amended to reflect that the state will bear approximately \$20 of the annual transportation cost of each student eligible for transportation under state regulations.

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18. The clause "80 per cent of the buses require more than one hour of a one-way trip;" should be amended to 77 per cent.

The clause "75 per cent of the buses make two or more trips each day;" should be amended to reflect 62 per cent of such buses.

The clause "average miles traveled by buses making one round trip per day is 34.5;" should be amended to reflect such average miles of 29.8 per day.

The clause "average bus mileage per day for buses making two trips is 47.99" should be amended to reflect such average bus mileage at 43.5 miles per day.

For clarity, this paragraph should contain an explanation that each morning and afternoon mileage would represent one-half of the round trip mileage.

19. Clarification is requested with respect to the following sentence in Paragraph 19: "The Court plan calls for pick-ups to be made at a few points in each school district, as testified to by Dr. Self, and for non-stop runs to be made between satellite zones and principal zones." It was the understanding of the defendants that the method of pick-up and delivery of students would be left to their discretion. Clarification is requested to determine whether or not this is a specific directive of the Court amending its prior orders.

The Court should further clarify Paragraph 19 to find that in accordance with the affidavit of Mr. Herman Hoose dated February 24, 1970, that school buses will materially add to the congestion and safety of the traveling public on congested city streets.

*Objections and Exceptions to Supplementary Findings
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20. This finding should be amended to reflect that only 23,000 children are being transported at state expense at the present time. It should further reflect that although the distance of travel is not substantially greater for the children to be transported under the Court-ordered plan, their transportation will occur in congested city traffic which will require substantially longer time than transportation in the outlying rural transportation system now principally employed by the school system.

21. This paragraph should be amended to reflect the true facts as follows: "On July 29, 1969, (pursuant to the Court's April 23, 1969, order that they frame a plan for desegregation and that school buses could be used as needed), the defendants proposed a plan for closing seven inner-city black schools and transferring students from overcrowded schools and assigning them totaling some 4,200 students to outlying schools. Students not wishing to attend the outlying schools were permitted to attend surrounding schools (transcript August 5, 1969, page 21) and Irwin Avenue Elementary (amendment to plan of July 29, 1969). The plan was approved and has resulted in the transportation of approximately 1,300 inner-city students to outlying schools which required the utilization of 30 buses. Transportation time for these 30 buses requires approximately one hour and fifteen minutes one way.

26. Clarification is requested of the sentence "It is the assignment of these children which is the particular subject of the reference in Paragraph 13 of the order to the manner of handling assignments within the school year." Does the

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Court direct the Board to utilize these students in making assignments for the conscious purpose of maintaining each school in a condition of desegregation? Shall such students be assigned to schools only where assignment of their race would improve or maintain a condition of desegregation in the school to which assignment is made?

27. Clarification is requested with reference to the credence and reliability the Court attributes to the efforts of the school staff in developing the plans for desegregation.

28. The term "hearings" should be amplified to reflect that the Court repeatedly stated that evidence regarding transportation costs and other transportation data was irrelevant. (Transcript of hearing, February 5, 1970, pages 112-114, 128-130, 134, 150 and 151.)

29. Clarification is requested with reference to the sentence "All transportation under both the Board and the Court plan is covered by state law." Does the Court by this sentence amend its order of February 5, 1970, as amended by order of March 3, 1970, to the extent that the Board will not be required to furnish transportation to students who have been reassigned and whose attendance is necessary for the desegregation of the school of their attendance where they would not be furnished transportation under the applicable state law at state expense?

30. The sentence, "These one-way transfers, essentially identical in nature to the Board's July 29, 1969 plan, will result in the substantial desegregation of all the junior

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high schools, which are left under this plan with black student populations varying from 9 per cent at J. H. Gunn to 33 per cent at Alexander and Randolph." As pointed out above, the Board in its July 29, 1969, plan as explained by Dr. Self (transcript, August 5, 1969, pages 21 and 22) provided one-way transfers only to those students who accepted and did not elect to go to surrounding schools or Irwin Avenue Elementary.

The Court should acknowledge that the four choices given to the School Board were, in reality, not choices at all. The Board had explored choice #1, rezoning, and found that Piedmont Junior High School could not be converted from a predominantly black school by such method; two-way involuntary transportation of pupils between Piedmont and white schools contravenes the Board's idea of what the Constitution requires; alternative #3 relating to closing of Piedmont was rejected by the Board among other reasons for the reason that the junior high schools are substantially overcrowded; the remaining alternative for the adoption of the Finger plan kept open the option of the Board to seek an appellate determination with respect to involuntary transportation of students out of their school district. The Board did not adopt the Finger plan, rather it was imposed by default in not electing alternatives #1, #2 and #3.

32. The sentence "It would leave nine elementary schools 83 per cent to 100 per cent black" should be clarified to indicate that there are white students who will be assigned to each of these nine elementary schools, leaving no all black schools.

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The sentence "In short, it does not tackle the problem of the black elementary schools in Northwest Charlotte" should be clarified to point out that although rezoning accomplished substantial desegregation in some predominantly black elementary schools in northwest Charlotte, nine schools remained which were 83 to 99 per cent black.

The portion of the sentence appearing at the top of page 16, "... the transportation problems presented by the zoning portion of the plan can be solved with available resources" is unsupported in the record. The defendants specifically object to the finding of the Court contained in the last paragraph of Paragraph 32 as there are many thousands of students who reside beyond one and one-half miles distant from the school to which they are assigned with respect to rezoned schools. The finding of the Court with reference to transportation requirements of 1,300 elementary students requiring ten buses is wholly unsupported by the record.

33. The sentence "The estimate of Dr. Finger and Dr. Self, the Superintendent, was that this program would require transporting roughly 5,000 white pupils of fifth and sixth grade levels into the inner-city schools" should be amended to reflect that conversely, roughly 5,000 inner-city blacks would be transported to the outlying suburban schools.

The sentence "The Board in its latest estimate puts the total figure at 10,206," should be amended to reflect that this figure represents approximately 5,000 white and 5,000 black students.

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The sentence "Just what is the net additional number of students to be transported who are not already receiving transportation is open to considerable question" is unsupported in the record. Both plaintiffs' evidence through Dr. Finger and the Board through Mr. Morgan and Dr. Self are the only evidence in the record relating to this information and there is no dispute about the approximate number of students to be transported in the paired and grouped schools under the cross-busing feature.

34. Subparagraph A again carries the implication that some 5,000 children daily are provided transportation on City Coach Lines by the school system. This is erroneous as these children provide their own transportation and funds on City Coach Lines which offers a student discount.

Subparagraph B is erroneous to the extent that it assumes a substantial discount of students accepting transportation. The record clearly discloses that the elementary paired schools are so remote that transportation can be expected to be almost 100 per cent. This likewise holds true for transportation of students who live in the satellite districts. This leaves approximately 6,000 students who live in rezoned areas and even if substantially discounted would not materially affect the transportation requirements of the Court order.

Subparagraph C leaves the implication that transportation should be afforded based on average daily attendance. This overlooks the fact that transportation space must be available for all students entitled to transportation as all eligible students may or may not desire transportation on a given day.

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Subparagraph D relating to number of students transported round trip per day per bus is more than 83 students. This overlooks utilization of each bus on 1.8 trips per day, thereby resulting in bus loading of approximately 44 to 46 students per trip. This further overlooks the fact that larger buses may be employed in the county than proposed under the transportation of students in smaller buses in congested traffic.

Subparagraph E relating to the one trip per bus per day under the Board estimate clearly recognizes that buses may be utilized with respect to the paired schools for only one trip unless operational costs are increased 40 to 60 per cent by resorting to adult drivers. The same holds true with reference to satellite schools. With reference to rezoned areas containing some 6,000 students, double utilization of some of the buses would not appreciably affect the Board estimates.

Subparagraph F. The average one-way trips required under the Court plan are estimated at less than seven miles. It is submitted that this is unsupported in the record as the Court completely ignores lines of travel routes upon the streets as they exist and further ignores the actual experience of the school system as reflected on the principals reports with respect to the buses identified in the affidavit of Mr. J. D. Morgan and John W. Harrison, Sr. dated March 21, 1970. The actual time being reflected by the record for transportation is approximately one hour and fifteen minutes.

Subparagraph G relating to staggering of school opening and closing, particularly with reference to zoned and paired schools, would reflect the following type schedule.

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The first bus would begin picking children up at 6:45 a.m., deliver the students to the first school at 8:00, then begin picking up students for the second school, deliver them to school at 9:15, then the driver would prior to 2:30 return to the first school to pick up the children to return them home and they would reach home by 3:45. The bus then would go to the second school and pick up children and would get them home at approximately 5:00. Obviously, the school administration would have to go to adult drivers who would increase the operational cost by 40 to 60 per cent (J.D. Morgan depositions and affidavit).

Subparagraph J reflects a misunderstanding with respect to the requirements of North Carolina law for furnishing transportation. Students who reside more than one and one-half miles by the nearest convenient travel route and live in eligible areas are furnished transportation. By running a series of samples, the school administration determined that a radius of one and one-quarter miles would average out to the nearest line of travel being one and one-half miles (J. D. Morgan affidavit and deposition).

Subparagraph K relating to increasing the walking distance would contravene state law with respect to furnishing transportation and would not appreciably reduce the number of students eligible for transportation.

Subparagraph L relating to overload is possible under present transportation circumstances. Only those students near the end of the bus run are permitted to stand and ride a relatively short distance. Standing in congested city traffic over long distances would be most unsafe in operating the transportation system.



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35. Transportation estimates of the Court are unsupported in the record and reflect utilization of discount factors in Paragraph 34 which are not valid. The Board estimates were prepared from demographic charts reflecting the location of students to be transported and the record in this cause contains no such chart for the use of the Court in reaching its estimate. Furthermore, the busing estimates contravene the only reliable evidence in the record, the experience of the transportation system.

36. Finding of the Court that the transportation will be provided under state law is irrelevant as the taxpayers of this county contribute their tax dollars to Raleigh in support of public education. State funds are merely a return of a portion of the funds they have paid to the state for public education.

38. The four parts of the desegregation plan are not separable. There is some overlapping between elementaries which are paired or rezoned which will require assignment of children on one basis or possibly both bases if the total plan is implemented.

The February 5, 1970, order, directs total and complete implementation of all elementary school desegregation as ordered at one time. The Board seeks clarification with respect to whether or not it was contemplated that pairing and grouping should be implemented piecemeal as suggested by this paragraph.

39. This finding is an erroneous characterization of statements of counsel for the defendants and also the

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Superintendent. A transcript of the hearing held on February 2, 1970, at page 20 states:

"Assuming that the Finger plan must be implemented, it is believed that within the next six to eight weeks, *we could begin phasing* in elementary schools into the new zones and perhaps provide *some* of the pairing and groupings that Dr. Finger proposes. We would propose that the junior and senior high schools be deferred until the last three weeks of school and high school senior complete the school year at the school of their present attendance."

(Transcript February 2, 1970, page 21, line 23)

"One problem that this time table overlooks is that we do not have the means for transporting the students nor is there likelihood that it will be available before the end of this school year."

40. Although the February 5 order provided that "racial balance" was not required, it was the effect of the order. Otherwise, the results of the Court ordered plan would not have achieved approximate "optimal" ratios in all but a handful of schools in the system.

41. The cost estimate of the Court overlooks the undisputed testimony that the bus cost is being increased by approximately \$400. Furthermore, the number of buses and the total reached by the Court are based upon an erroneous assumption as indicated above.

The Court fails to address itself to the very substantial problem of obtaining drivers for these buses.

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The cost referred to by the Court as "excess costs" are not out of any desire on the part of the Board of Education to increase costs; rather, they are the direct and proximate result of the order of the Court.

Again, attention is called to the fact that the Court has overstated per capita costs by approximately \$20.

The annual transportation cost per student, including amortization, is based upon erroneous premises and overlooks substantial factors, such as the actual number of students to be transported (19,285), the number of buses (422, costing \$2,369,000), cost of parking areas (\$285,000), cost of operation (annual recurring \$587,000), additional personnel expense (annual recurring \$166,000), all of which is carefully documented in submission to the Court on March 17, 1970, for a total initial first-year expense of \$3,407,000, excluding depreciation or amortization.

42. The Court overlooks testimony of local and state officials, which is uncontradicted that the maximum number of buses to be made available to Mecklenburg County would be 30 buses to replace ancient equipment (12 to 15 years old) now being operated and scheduled for removal from service, plus 40 additional buses which would cost approximately \$200,000, which funds the Board of Education does not have and has been informed by the County Commissioners is not forthcoming.

Furthermore, the Court should find that the 375 used buses in storage as indicated in the record are unsafe and inadequate for transporting children served by this system.

The finding should further reflect that although no order has been placed, the Board of Education has been advised

*Objections and Exceptions to Supplementary Findings
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of the number of buses available from the state, namely 75, provided funds are available. Furthermore, under state law, school systems are not permitted to purchase equipment on credit. G.S. 115-52.

The finding with reference to delivery of buses in sixty to ninety days is erroneous. The record clearly discloses that the first chassis would be available in approximately ninety days and a substantial period of time would be required to fabricate and attach the body of the bus to the chassis for ultimate delivery.

It is quite apparent from the foregoing that the Court has given credence to most information submitted by the Board of Education and for some reason rejects transportation information prepared by a staff thoroughly familiar with the transportation requirements of our system, which staff has many years of experience with the special needs of our Charlotte-Mecklenburg school system. It is noteworthy that the Court's estimates closely parallel those of Dr. John Finger who admittedly spent very little time preparing his estimates. (Finger deposition dated March 11, 1970, pages 74 and 75)

WHEREFORE, the original defendants request the Court to amend its supplementary findings of fact dated March 21, 1970, to conform to the record in this matter as more particularly set forth above.

*Objections and Exceptions to Supplementary Findings
of Fact of March 21, 1970, and Motion for
Modification and Clarification Thereof*

Respectfully submitted this 25th day of March, 1970.

/s/ WILLIAM J. WAGGONER
William J. Waggoner
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/s/ BENJ. S. HORACK
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Attorneys for Defendants

Order dated March 25, 1970

In the original order of April 23, 1969, and in the order of August 15, 1969, the projected time for completion of desegregation of the schools was set for September 1970. The court did not then consider and never has at any time considered that wholesale mid-year or mid-term transfers of pupils or teachers were desirable. Furthermore, it was contemplated by all parties that this time table would allow time for orderly development of plans as well as for appeal by all who might wish to appeal.

On October 29, 1960, in *Alexander v. Holmes County*, the Supreme Court ordered the immediate desegregation of schools involving many thousands of Mississippi school children. In *Carter v. West Feliciana Parish*, — U. S. — (January 14, 1970), the Supreme Court reversed the Fifth Circuit Court of Appeals and set a February 1, 1970 deadline to desegregate schools in Gulf Coast states involving many thousands of children. In *Nesbit v. Statesville*, 418 F.2d 1040, on December 2, 1969, the Fourth Circuit read *Alexander* as follows:

"The clear mandate of the Court is immediacy. Further delays will not be tolerated in this circuit."

In *Whittenburg v. Greenville County, South Carolina*, — F.2d — (January 1970), the Fourth Circuit Court of Appeals read *Alexander* to say that

"... general reorganization of school systems is requisite now, that the requirement is not restricted to the school districts before the Supreme Court in *Alexander*, and that Courts of Appeals are not to authorize the postponement of general reorganization until September 1970.

• • •

Order dated March 25, 1970

"The District Court's order shall not be stayed pending any appeal which may be taken to this court, . . . (Emphasis added.)"

On January 26, 1970, on re-hearing, the Fourth Circuit Court of Appeals said:

"The proper functioning of our judicial system requires that subordinate courts and public officials faithfully execute the orders and directions of the Supreme Court. . . . no member of this court can read the opinions in *Carter* as leaving any room for the exercise by this court in this case of any discretion in considering a request for postponement of the reassignment of children and teachers until the opening of the next school year."

The petition of Greenville for a stay of the order was again denied, and the Greenville schools were desegregated as of February 16, 1970.

The last *Greenville* decision was ten days old at the time of this court's order of February 5, 1970. These were the mandates under which it was ordered that the Charlotte-Mecklenburg schools should be desegregated before the end of the spring term, and that the mandate should not be stayed pending appeal.

Since that time, several suits have been filed in state court seeking to prevent implementation of the February 5, 1970 order, and decision by the three-judge court now considering the constitutionality of the "anti-bussing" law, North Carolina General Statutes, §115-176.1, does not appear likely before April 1, 1970. The appeal of the defendants in the *Swann* case to the Fourth Circuit Court of Appeals is not scheduled to be heard until April 9,

Order dated March 25, 1970

1970, and there is no way to predict when a decision on that appeal will be rendered. There is also no way to predict when a final decision by the Supreme Court will be made on any of these issues, nor what the final decision may be.

Furthermore, notwithstanding the *Holmes County, Greenville, Carter* and *Statesville* decisions, the Fourth Circuit Court of Appeals has now rendered a stay as to certain portions of the February 5, 1970 order, and a petition to vacate that stay has been denied by the Supreme Court. The Fourth Circuit Court of Appeals and the Supreme Court have now demonstrated an interest in the cost and inconvenience and disruption that the order might produce—factors which, though bussing was not specifically mentioned, appear not to have been of particular interest to either the Fourth Circuit Court or the Supreme Court when *Holmes County, Carter, Greenville* and *Statesville* were decided.

The only reason this court entered an order requiring mid-semester transfer of children was its belief that the language of the Supreme Court and the Fourth Circuit above quoted in this order, given its reasonable interpretation, required district courts to direct desegregation before the end of this school year.

The urgency of "desegregation now" has now been in part dispelled by the same courts which ordered it, and the court still holds its original view that major desegregation moves should not take place during school terms nor piecemeal if they can be avoided.

Therefore, IT IS ORDERED, that the time table for implementation of this court's order of February 5, 1970 be, and it is hereby modified so that the implementation of the various parts of the desegregation order will not be

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Order dated March 25, 1970

required until September 1, 1970, subject, however, to any different decisions that may be rendered by appellate courts and with the proviso that the school board may if they wish proceed upon any earlier dates they may elect with any part or parts of the plan.

This is the 25th day of March, 1970.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Further Findings of Fact on Matters Raised by the
March 26, 1970, Motions of Defendants
dated April 3, 1970**

On March 26, 1970, the defendant school board filed "OBJECTIONS AND EXCEPTIONS TO SUPPLEMENTARY FINDINGS OF FACT OF MARCH 21, 1970, AND MOTION FOR MODIFICATION AND CLARIFICATION THEREOF." The court has reviewed the questions raised in that document and makes further findings of fact with reference to certain of its numbered paragraphs as follows:

¶¶ 1, 4, 16, 40. The annual school bus cost per pupil transported, including everything except the original cost of the bus, parking arrangements and certain local administrative costs, for the 1968-69 year, was \$19.92. The state reimburses the Charlotte-Mecklenburg school system approximately this \$19.92 per pupil. The April 23, 1969, and February 5, 1970, findings of fact estimated the original cost and periodic replacement of the busses themselves at \$18 to \$20 per pupil per year, which, added to the \$19.92, resulted in the estimate of \$40 as the total annual per pupil transportation cost. That estimate assumed that the local schools would have to pay for periodic *replacement* of busses as well as for their original purchase. Since it is now clear from the deposition of D. J. Dark that the replacement of worn out or obsolescent busses is *included* in the \$19.92 figure, the overall estimate of \$40 per pupil per year is far too high. Instead of a *continuing* annual local per pupil cost of \$18 or \$20 to supply and replace busses, as the court originally understood, the local board will have to bear only administrative and parking expenses, plus the original, one-time purchase of the busses. This cuts the annual cost of bus transportation from nearly \$40 per pupil per year as originally estimated, to a figure closer

*Further Findings of Fact on Matters Raised by the
March 26, 1970, Motions of Defendants
dated April 3, 1970*

to \$20 per pupil per year, and reduces the capital outlay required of the local board to the one-time purchase of about 138 busses at a cost of about \$745,200.00, plus whatever may prove to be actually required in the way of additional parking facilities. Paragraphs 1, 4, 16 and 40 of the supplemental findings of fact are amended accordingly.

¶¶ 2, 4, 11, 34. Although the evidence concerning the 5,000 children currently transported by City Coach Lines lacks clarity, the court agrees with the defendant that it should not be inferred that they are the source of payment for this transportation, and the court specifically corrects the previous finding so as to delete any reference to the source of payment for this transportation.

¶ 21. The school board's July 29, 1969 plan (see pages 457-459 of the record on appeal) proposed the transfer and transportation of over 4,200 black children. The court on November 7, 1969, on the basis of the then evidence, found that the number actually transferred was 1,315. The affidavit of J. D. Morgan dated February 13, 1970 (paragraph 4, page 770 of the record on appeal), indicated that the number of these students being transported was 738, requiring 13 busses. The findings of fact proposed by the defendants gave the number as "over 700." The J. D. Morgan affidavit of March 21, 1970, indicated that the number of busses was 30 instead of 13. From this conflicting evidence the court concluded that "several hundred" was as accurate as could be found under the circumstances.

¶ 33. Paragraph 33 is amended as requested by adding after the word "schools" in the eleventh line of the paragraph:

*Further Findings of Fact on Matters Raised by the
March 26, 1970, Motions of Defendants
dated April 3, 1970*

“—and about 5,000 black children, grades one through four, to outlying white schools.”

¶ 34(f). The average *straight line* mileage between the elementary schools paired or grouped under the “cross-bussing” plan is approximately $5\frac{1}{2}$ miles. The average bus *trip* mileage of about seven miles which was found in paragraph 34(f) was arrived at by the method which J. D. Morgan, the county school bus superintendent, testified he uses for such estimates—taking straight line mileage and adding 25%.

As to the other items in the document, the court has analyzed them carefully and finds that they do not justify any further changes in the facts previously found.

This the 3rd day of April, 1970.

/s/ JAMES B. McMILLAN
James B. McMillan
United States District Judge

**Opinions of Court of Appeals
dated May 26, 1970**

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 14,517

No. 14,518

JAMES E. SWANN, et al.,

Appellees and Cross-Appellants,

—versus—

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, et al.,

Appellants and Cross-Appellees.

Appeals from the United States District Court for the Western District of North Carolina, at Charlotte. James B. McMillan, District Judge.

(Argued April 9, 1970.

Decided May 26, 1970.)

Before HAYNSWORTH, Chief Judge, SOBELOFF, BOREMAN, BRYAN, WINTER, and BUTZNER, Circuit Judges, sitting en banc.*

BUTZNER, Circuit Judge:

The Charlotte-Mecklenburg School District appealed from an order of the district court requiring the faculty and student body of every school in the system to be racially mixed. We approve the provisions of the order deal-

* Judge Craven disqualified himself for reasons stated in his separate opinion.

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ing with the faculties of all schools¹ and the assignment of pupils to high schools and junior high schools, but we vacate the order and remand the case for further consideration of the assignment of pupils attending elementary schools. We recognize, of course, that a change in the elementary schools may require some modification of the junior and senior high school plans, and our remand is not intended to preclude this.

I.

The Charlotte-Mecklenburg school system serves a population of over 600,000 people in a combined city and county area of 550 square miles. With 84,500 pupils attending 106 schools, it ranks as the nation's 43rd largest school district. In *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 369 F.2d 29 (4th Cir. 1966), we approved a desegregation plan based on geographic zoning with a free transfer provision. However, this plan did not eliminate the dual system of schools. The district court found that during the 1969-70 school year, some 16,000 black pupils, out of a total of 24,700, were attending 25 predominantly black schools, that faculties had not been integrated, and that other administrative practices, including a free transfer plan, tended to perpetuate segregation.

Notwithstanding our 1965 approval of the school board's plan, the district court properly held that the board was impermissibly operating a dual system of schools in the

¹ The board's plan provides: "The faculties of all schools will be assigned so that the ratio of black teachers to white teachers in each school will be approximately the same as the ratio of black teachers to white teachers in the entire school system." We have directed other school boards to desegregate their faculties in this manner. See *Nesbit v. Statesville City Bd. of Ed.*, 418 F.2d 1040, 1042 (4th Cir. 1969); cf., *United States v. Montgomery County Bd. of Ed.*, 395 U.S. 225, 232 (1969).

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light of subsequent decisions of the Supreme Court, *Green v. School Bd. of New Kent County*, 391 U.S. 430, 435 (1968), *Monroe v. Bd. of Comm'rs*, 391 U.S. 450 (1968), and *Alexander v. Holmes County Bd. of Ed.*, 396 U.S. 19 (1969).

The district judge also found that residential patterns leading to segregation in the schools resulted in part from federal, state, and local governmental action. These findings are supported by the evidence and we accept them under familiar principles of appellate review. The district judge pointed out that black residences are concentrated in the northwest quadrant of Charlotte as a result of both public and private action. North Carolina courts, in common with many courts elsewhere, enforced racial restrictive covenants on real property² until *Shelley v. Kraemer*, 334 U.S. 1 (1948) prohibited this discriminatory practice. Presently the city zoning ordinances differentiate between black and white residential areas. Zones for black areas permit dense occupancy, while most white areas are zoned for restricted land usage. The district judge also found that urban renewal projects, supported by heavy federal financing and the active participation of local government, contributed to the city's racially segregated housing patterns. The school board, for its part, located schools in black residential areas and fixed the size of the schools to accommodate the needs of immediate neighborhoods. Predominantly black schools were the inevitable result. The interplay of these policies on both residential and educational segregation previously has been recognized by this and other courts.³ The fact that similar forces operate in cities

² E.g., *Phillips v. Wearn*, 226 N.C. 290, 37 S.E.2d 895 (1946).

³ E.g., *Henry v. Clarksdale Munic. Separate School Dist.*, 409 F.2d 682, 689 (5th Cir.), *cert. denied*, 396 U.S. 940 (1969); *United States v. School Dist. 151 of Cook County*, 404 F.2d 1125, 1130

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throughout the nation under the mask of *de facto* segregation provides no justification for allowing us to ignore the part that government plays in creating segregated neighborhood schools.

The disparity in the number of black and white pupils the Charlotte-Mecklenburg School Board busses to predominantly black and white schools illustrates how coupling residential patterns with the location of schools creates segregated schools. All pupils are eligible to ride school buses if they live farther than 1½ miles from the schools to which they are assigned. Overall statistics show that about one-half of the pupils entitled to transportation ride school buses. Only 541 pupils were bussed in October 1969 to predominantly black schools, which had a total enrollment of over 17,000. In contrast, 8 schools located outside the black residential area have in the aggregate only 96 students living within 1½ miles. These schools have a total enrollment of about 12,184 pupils, of whom 5,349 ride school buses.

II.

The school board on its own initiative, or at the direction of the district court, undertook or proposed a number of reforms in an effort to create a unitary school system. It closed 7 schools and reassigned the pupils primarily to increase racial mixing. It drastically gerrymandered school

(7th Cir. 1968), *aff'd* 286 F. Supp. 786, 798 (N.D. Ill. 1968); *Brewer v. School Bd. of City of Norfolk*, 397 F.2d 37, 41 (4th Cir. 1968); *Keyes v. School Dist. No. One, Denver*, 303 F.Supp. 279 and 289 (D. Colo.), *stay pending appeal granted*, — F.2d — (10th Cir.), *stay vacated*, 396 U.S. 1215 (1969); *Dowell v. School Bd. of Oklahoma City*, 244 F.Supp. 971, 975 (W.D. Okla. 1965), *aff'd*, 375 F.2d 158 (10th Cir.), *cert. denied*, 387 U.S. 931 (1967). See generally Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 Harv. L. Rev. 564 (1965). But see, *Deal v. Cincinnati Bd. of Ed.*, 419 F.2d 1387 (6th Cir. 1969).

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zones to promote desegregation. It created a single athletic league without distinction between white and black schools or athletes, and at its urging, black and white PTA councils were merged into a single organization. It eliminated a school bus system that operated on a racial basis, and established nondiscriminatory practices in other facets of the school system. It modified its free transfer plan to prevent resegregation, and it provided for integration of the faculty and administrative staff.

The district court, after a painstaking analysis of the board's proposals and the relevant authorities, disapproved the board's final plan, primarily because it left ten schools nearly all black. In reaching this decision, the district court held that the board must integrate the student body of every school to convert from a dual system of schools, which had been established by state action, to a unitary system.

The necessity of dealing with segregation that exists because governmental policies foster segregated neighborhood schools is not confined to the Charlotte-Mecklenburg School District. Similar segregation occurs in many other cities throughout the nation, and constitutional principles dealing with it should be applied nationally. The solution is not free from difficulty. It is now well settled that school boards operating dual systems have an affirmative duty "to convert to a unitary school system in which racial discrimination would be eliminated root and branch." *Green v. School Bd. of New Kent County*, 391 U. S. 430, 437 (1968). Recently the Supreme Court defined a unitary school system as one "within which no person is to be effectively excluded from any school because of race or color." *Alexander v. Holmes County Bd. of Ed.*, 396 U. S. 19, 20 (1969). This definition, as the Chief Justice noted in *Northercross v. Board of Ed. of Memphis*, 90 S.Ct. 891, 893

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(1970), leaves open practical problems, "including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court."

Several of these issues arise in this case. To resolve them, we hold: first, that not every school in a unitary school system need be integrated; second, nevertheless, school boards must use all reasonable means to integrate the schools in their jurisdiction; and third, if black residential areas are so large that not all schools can be integrated by using reasonable means, school boards must take further steps to assure that pupils are not excluded from integrated schools on the basis of race. Special classes, functions, and programs on an integrated basis should be made available to pupils in the black schools. The board should freely allow majority to minority transfers and provide transportation by bus or common carrier so individual students can leave the black schools. And pupils who are assigned to black schools for a portion of their school careers should be assigned to integrated schools as they progress from one school to another.

We adopted the test of reasonableness—instead of one that calls for absolutes—because it has proved to be a reliable guide in other areas of the law. Furthermore, the standard of reason provides a test for unitary school systems that can be used in both rural and metropolitan districts. All schools in towns, small cities, and rural areas generally can be integrated by pairing, zoning, clustering, or consolidating schools and transporting pupils. Some cities, in contrast, have black ghettos so large that integra-

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tion of every school is an improbable, if not an unattainable, goal. Nevertheless, if a school board makes every reasonable effort to integrate the pupils under its control, an intractable remnant of segregation, we believe, should not void an otherwise exemplary plan for the creation of a unitary school system. *Ellis v. Board of Public Instruc. of Orange County*, No. 29124, Feb. 17, 1970 — F.2d — (5th Cir.)

III.

The school board's plan proposes that pupils will be assigned to the system's ten high schools according to geographic zones. A typical zone is generally fan shaped and extends from the center of the city to the suburban and rural areas of the county. In this manner the board was able to integrate nine of the high schools with a percentage of black students ranging from 17% to 36%. The projected black attendance at the tenth school, Independence, which has a maximum of 1400 pupils, is 2%.

The court approved the board's high school plan with one modification. It required that an additional 300 pupils should be transported from the black residential area of the city to Independence School.

The school board proposed to rezone the 21 junior high school areas so that black attendance would range from 0% to 90% with only one school in excess of 38%. This school, Piedmont, in the heart of the black residential area, has an enrollment of 840 pupils, 90% of whom are black. The district court disapproved the board's plan because it maintained Piedmont as a predominantly black school. The court gave the board four options to desegregate all the junior high schools: (1) rezoning; (2) two-way transportation of pupils between Piedmont and white schools; (3) closing Piedmont and reassigning its pupils and (4)

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adopting a plan proposed by Dr. John A. Finger, Jr., a consultant appointed by the court, which combined zoning with satellite districts. The board, expressing a preference for its own plan, reluctantly adopted the plan proposed by the court's consultant.

Approximately 31,000 white and 13,000 black pupils are enrolled in 76 elementary schools. The board's plan for desegregating these schools is based entirely upon geographic zoning. Its proposal left more than half the black elementary pupils in nine schools that remained 86% to 100% black, and assigned about half of the white elementary pupils to schools that are 86% to 100% white. In place of the board's plan, the court approved a plan based on zoning, pairing, and grouping, devised by Dr. Finger, that resulted in student bodies that ranged from 9% to 38% black.

The court estimated that the overall plan which it approved would require this additional transportation:

	No. of pupils	No. of buses	Operating costs
Senior High	1,500	20	\$ 30,000
Junior High	2,500	28	\$ 50,000
Elementary	9,300	90	\$186,000
TOTAL	13,300	138	\$266,000

In addition, the court found that a new bus cost about \$5,400, making a total outlay for equipment of \$745,200. The total expenditure for the first year would be about \$1,011,200.

The school board computed the additional transportation requirements under the court approved plan to be:

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	No. of pupils	No. of buses	Operating costs
Senior High	2,497	69	\$ 96,000
Junior High	4,359	84	\$116,800
Elementary	12,429	269	\$374,000
TOTAL	19,285	422	\$586,000

In addition to the annual operating cost, the school board projected the following expenditures:

Cost of buses	\$2,369,100
Cost of parking areas	284,800
Cost of additional personnel	166,200

Based on these figures, the school board computed the total expenditures for the first year would be \$3,406,700 under the court approved plan.⁴

⁴ The school board computed transportation requirements under the plan it submitted to be:

	No. of pupils	No. of buses	Operating cost
Senior High	1,202	30	\$ 41,700
Junior High	1,388	33	\$ 45,900
Elementary	2,345	41	\$ 57,000
TOTAL	4,935	104	\$144,600

The board estimated that the breakdown of costs for the first year of operation under its plan would be:

Cost of buses	\$589,900
Cost of parking areas	56,200
Operating expenses of	\$144,600
Plus depreciation allowance of	31,000
	<hr/>
	175,600
Cost of additional personnel	43,000

The estimated total first-year costs are \$864,700.

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Both the findings of the district court and the evidence submitted by the board are based on estimates that rest on many variables. Past practice has shown that a large percentage of students eligible for bus transportation prefer to provide their own transportation. However, it is difficult to accurately predict how many eligible students will accept transportation on the new routes and schedules. The number of students that a bus can carry each day depends in part on the number of trips the bus can make. Scheduling two trips for a bus generally reduces costs. But student drivers may not be able to spend the time required for two trips, so that adult drivers will have to be hired at substantially higher salaries. It is difficult to accurately forecast how traffic delays will affect the time needed for each trip, for large numbers of school buses themselves generate traffic problems that only experience can measure.

The board based its projections on each 54-passenger bus carrying about 40 high school pupils or 54 junior high and elementary pupils for one roundtrip a day. Using this formula, it arrived at a need of 422 additional buses for transporting 19,285 additional pupils. This appears to be a less efficient operation than the present system which transports 23,600 pupils with 280 buses, but the board's witnesses suggest that prospects of heavier traffic justify the difference. The board also envisioned parking that seems to be more elaborate than that currently used at some schools.

In making its findings, the district court applied factors derived from present bus operation, such as the annual operating cost per student, the average number of trips each bus makes, the capacity of the buses—including permissible overloads, and the percentage of eligible pupils who use other forms of transportation. The district court also found no need for expensive parking facilities or for

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additional personnel whose costs could not be absorbed by the amount allocated for operating expenses. While we recognize that no estimate—whether submitted by the board or made by the court—can be absolutely correct, we accept as not clearly erroneous the findings of the district court.

Opposition to the assignment of pupils under both the board's plan and the plan the court approved centered on bussing, which numbers among its critics both black and white parents. This criticism, however, cannot justify the maintenance of a dual system of schools. *Cooper v. Aaron*, 358 U.S. 1 (1958). Bussing is neither new nor unusual. It has been used for years to transport pupils to consolidated schools in both racially dual and unitary school systems. Figures compiled by the National Education Association show that nationally the number of pupils bussed increased from 12 million in the 1958-59 school year to 17 million a decade later. In North Carolina 54.9% of all pupils are bussed. There the average daily roundtrip is 24 miles, and the annual cost is over \$14,000,000. The Charlotte-Mecklenburg School District presently busses about 23,600 pupils and another 5,000 ride common carriers.

Bussing is a permissible tool for achieving integration, but it is not a panacea. In determining who should be bussed and where they should be bussed, a school board should take into consideration the age of the pupils, the distance and time required for transportation, the effect on traffic, and the cost in relation to the board's resources. The board should view bussing for integration in the light that it views bussing for other legitimate improvements, such as school consolidation and the location of new schools. In short, the board should draw on its experience with bussing in general—the benefits and the defects—so that it may intelligently plan the part that bussing will play in a unitary school system.

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Viewing the plan the district court approved for junior and senior high schools against these principles and the background of national, state, and local transportation policies, we conclude that it provides a reasonable way of eliminating all segregation in these schools. The estimated increase in the number of junior and senior high school students who must be bussed is about 17% of all pupils now being bussed. The additional pupils are in the upper grades and for the most part they will be going to schools already served by busses from other sections of the district. Moreover, the routes they must travel do not vary appreciably in length from the average route of the system's buses. The transportation of 300 high school students from the black residential area to suburban Independence School will tend to stabilize the system by eliminating an almost totally white school in a zone to which other whites might move with consequent "tipping" or resegregation of other schools.⁵

We find no merit in other criticism of the plan for junior and senior high schools. The use of satellite school zones⁶

⁵ These 300 students will be bussed a straight-line distance of some 10 miles. The actual bus routes will be somewhat longer, depending upon the route chosen. A reasonable estimate of the bus route distance is 12 to 13 miles. The principal's monthly bus reports for Independence High School for the month from January 10, 1970 to February 10, 1970 shows the average one-way length of a bus route at Independence is presently 16.7 miles for the first trip. Buses that make two trips usually have a shorter second trip. The average one-way bus route, including both first and second trips, is 11.7 miles. Thus the distance the 300 pupils will have to be bussed is nearly the same as the average one-way bus route of the students presently attending Independence, and it is substantially shorter than the system's average one-way bus trip of 17 miles.

⁶ Satellite school zones are non-contiguous geographical zones. Typically, areas in the black core of the city are coupled—but not geographically linked—with an area in white suburbia.

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as a means of achieving desegregation is not improper. District Courts have been directed to shape remedies that are characterized by the "practical flexibility" that is a hallmark of equity. See *Brown v. Board of Ed.*, 349 U.S. 294, 300 (1955). Similarly, the pairing and clustering of schools has been approved. *Green v. County School Bd. of New Kent County*, 391 U.S. 430, 442 n. 6 (1968); *Hall v. St. Helena Parish School Bd.*, 417 F.2d 801, 809 (5th Cir.), *cert. denied*, 396 U.S. 904 (1969).

The school board also asserts that §§ 401(b) and 407(a) (2) of the Civil Rights Act of 1964 [42 U.S.C. §§ 2000c(b) and -6(a)(2)] forbid the bussing ordered by the district court.⁷ But this argument misreads the legislative history of the statute. Those provisions are not limitations on the power of school boards or courts to remedy unconstitutional segregation. They were designed to remove any implication that the Civil Rights Act conferred new jurisdiction on courts to deal with the question of whether school boards were obligated to overcome *de facto* segregation. See generally, *United States v. School District 151*, 404

⁷ Title 42 U.S.C. § 2000c(b) provides that as used in the subchapter on Public Education of the Civil Rights Act of 1964:

"'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Title 42 § 2000c-6(a)(2) states in part:

"[P]rovided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

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F.2d 1125, 1130 (7th Cir. 1968); *United States v. Jefferson County Board of Ed.*, 372 F.2d 836, 880 (5th Cir. 1966), *aff'd on rehearing en banc* 380 F.2d 385 (5th Cir.), *cert. denied, sub nom. Caddo Parish School Bd. v. United States*, 389 U.S. 840 (1967); *Keyes v. School Dist. No. One, Denver*, 303 F.Supp. 289, 298 (D. Colo.), *stay pending appeal granted*, — F.2d — (10th Cir.); *stay vacated*, 396 U.S. 1215 (1969). Nor does North Carolina's anti-bussing law present an obstacle to the plan, for those provisions of the statute in conflict with the plan have been declared unconstitutional. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, — F. Supp. — (W.D.N.C. 1970).³

The district court properly disapproved the school board's elementary school proposal because it left about one-half of both the black and white elementary pupils in schools that were nearly completely segregated. Part of the difficulty concerning the elementary schools results from the board's refusal to accept the district court's suggestion that it consult experts from the Department of Health, Education, and Welfare. The consultants that the board employed were undoubtedly competent, but the board limited their choice of remedies by maintaining each school's grade structure. This, in effect, restricted the means of overcoming segregation to only geographical zoning, and as a further restriction the board insisted on contiguous zones. The board rejected such legitimate techniques as

³ The unconstitutional provisions are:

"No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing." N.C. Gen. Stat. § 115-176.1 (Supp. 1969).

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pairing, grouping, clustering, and satellite zoning. Moreover, the board sought to impose a ratio in each school of not less than 60% white students. While a 60%-40% ratio of white to black pupils might be desirable under some circumstances, rigid adherence to this formula in every school should not be allowed to defeat integration.

On the other hand, the Finger plan, which the district court approved, will require transporting 9,300 pupils in 90 additional buses. The greatest portion of the proposed transportation involves cross-bussing to paired schools—that is, black pupils in grades one through four would be carried to predominantly white schools, and white pupils in the fifth and sixth grades would be transported to the black schools. The average daily roundtrip approximates 15 miles through central city and suburban traffic.

The additional elementary pupils who must be bussed represent an increase of 39% over all pupils presently being bussed, and their transportation will require an increase of about 32% in the present fleet of buses. When the additional bussing for elementary pupils is coupled with the additional requirements for junior and senior high schools, which we have approved, the total percentages of increase are: pupils, 56%, and buses, 49%. The board, we believe, should not be required to undertake such extensive additional bussing to discharge its obligation to create a unitary school system.

IV.

Both parties oppose a remand. Each side is adamant that its position is correct—the school board seeks total approval of its plan and the plaintiffs insist on implementation of the Finger plan. We are favorably impressed, however, by the suggestion of the United States, which at

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our invitation filed a brief as amicus curiae, that the school board should consider alternative plans, particularly for the elementary schools. We, therefore, will vacate the judgment of the district court and remand the case for reconsideration of the assignment of pupils in the elementary schools, and for adjustments, if any, that this may require in plans for the junior and senior high schools.

On remand, we suggest that the district court should direct the school board to consult experts from the Office of Education of the Department of Health, Education, and Welfare, and to explore every method of desegregation, including rezoning with or without satellites, pairing, grouping, and school consolidation. Undoubtedly some transportation will be necessary to supplement these techniques. Indeed, the school board's plan proposed transporting 2,300 elementary pupils, and our remand should not be interpreted to prohibit all bussing. Furthermore, in devising a new plan, the board should not perpetuate segregation by rigid adherence to the 60% white-40% black racial ratio it favors.

If, despite all reasonable efforts to integrate every school, some remain segregated because of residential patterns, the school board must take further steps along the lines we previously mentioned, including a majority to minority transfer plan,⁹ to assure that no pupil is excluded from an integrated school on the basis of race.

⁹ The board's plan provides:

"Any black student will be permitted to transfer only if the school to which he is originally assigned has more than 30 per cent of his race and if the school he is requesting to attend has less than 30 per cent of his race and has available space. Any white student will be permitted to transfer only if the school to which he is originally assigned has more than 70 per cent of his race and if the school he is requesting to

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Alexander v. Holmes County Bd. of Ed., 396 U.S. 19 (1969), and *Carter v. West Feliciana School Bd.*, 396 U.S. 290 (1970), emphasize that school boards must forthwith convert from dual to unitary systems. In *Nesbit v. Statesville City Bd. of Ed.*, 418 F.2d 1040 (4th Cir. 1969), and *Whittenberg v. School Dist. of Greenville County*, — F.2d — (4th Cir. 1970), we reiterated that immediate reform is imperative. We adhere to these principles, and district courts in this circuit should not consider the stays which were allowed because of the exceptional nature of this case to be precedent for departing from the directions stated in *Alexander*, *Carter*, *Nesbit*, and *Whittenberg*.

Prompt action is also essential for the solution of the remaining difficulties in this case. The school board should immediately consult with experts from HEW and file its new plan by June 30, 1970. The plaintiffs should file their exceptions, if any, within 7 days, and the district court should promptly conduct all necessary hearings so that the plan may take effect with the opening of school next fall. Since time is pressing, the district court's order approving a new plan shall remain in full force and effect unless it is modified by an order of this court. After a plan has been approved, the district court may hear additional objections or proposed amendments, but the parties shall comply with the approved plan in all respects while the

attend has less than 70 per cent of his race and has available space."

This clause, which was designed to prevent tipping or resegregation, would be suitable if all schools in the system were integrated. But since the board envisions some elementary schools will remain nearly all black, it unduly restricts the schools to which pupils in these schools can transfer. It should be amended to allow these elementary pupils to transfer to any school in which their race is a minority if space is available.

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district court considers the suggested modifications. Cf. *Nesbit v. Statesville City Bd. of Ed.*, 418 F.2d 1040, 1043 (4th Cir. 1969).

Finally, we approve the district court's inclusion of Dr. Finger's consultant fee in the costs taxed against the board. See *In the Matter of Peterson*, 253 U.S. 300, 312 (1920). We caution, however, that when a court needs an expert, it should avoid appointing a person who has appeared as a witness for one of the parties. But the evidence discloses that Dr. Finger was well qualified, and his dual role did not cause him to be faithless to the trust the court imposed on him. Therefore, the error, if any, in his selection, was harmless.

We find no merit in the other objections raised by the appellants or in the appellees' motion to dismiss the appeal. The judgment of the district court is vacated, and the case is remanded for further proceedings consistent with this opinion.

SOBELOFF, Circuit Judge, with whom WINTER, Circuit Judge, joins, concurring in part and dissenting in part:

Insofar as the court today affirms the District Court's order in respect to the senior and junior high schools, I concur. I dissent from the failure to affirm the portion of the order pertaining to the elementary schools.

I

THE BASIC LAW AND THE PARTICULAR FACTS

All uncertainty about the constitutional mandate of *Brown v. Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), was put to rest when in *Green v. County School Board of New Kent County* the Supreme Court spelled out a school board's "affirmative duty to take

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whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch," 391 U.S. 430, 437-438 (1968). "Disestablish[ment of] state-imposed segregation" (at 439) entailed "steps which promise realistically to convert promptly to a system without a 'white' school and a 'negro' school, but just schools" (at 442). If there could still be doubts they were answered this past year. In *Alexander v. Holmes County Board of Education*, the Court held that "[u]nder explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools," 396 U.S. 19, 20 (1969). The command was once more reaffirmed in *Carter v. West Feliciana School Board*, 396 U.S. 290 (1970), requiring "relief that will at once extirpate any lingering vestiges of a constitutionally prohibited dual school system." (Harlan, J., concurring at 292).

We face in this case a school district divided along racial lines. This is not a fortuity. It is the result, as the majority has recognized, of government fostered residential patterns, school planning, placement, and, as the District Court found, gerrymandering. These factors have interacted on each other so that by this date the black and white populations, in school and at home, are virtually entirely separate.

As of November 7, 1969, out of 106 schools in the system, 57 were racially identifiable as white, 25 were racially identifiable as black.¹ Of these, nine were all white schools and eleven all black. Of 24,714 black students in the system, 16,000 were in entirely or predominantly black schools.

¹ In the entire system, 71% of the pupils are white, 29% of the pupils are black. The District Judge deemed a school having 86% or greater white population identifiable as white, one with 56% or greater black population identifiable as black.

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There are 76 elementary schools with over 44,000 pupils. In November 1969, 43 were identifiable as white, 16 as black, with 13 of the latter 98% or more black, and none less than 65%. For the future the Board proposes little improvement. There would still be 25 identifiably white elementary schools and approximately half of the white elementary students would attend schools 86 to 100% white. Nine schools would remain 83 to 100% black, serving 6,432 students or over half the black elementary pupils.

To call either the past or the proposed distribution a "unitary system" would be to embrace an illusion.² And the majority does not contend that the system is unitary, for it holds that "the district court properly disapproved the school board's elementary school proposal because it left about one-half of both the black and white elementary pupils in schools that were nearly completely segregated." The Board's duty then is plain and unarguable: to convert to a unitary system. The duty is absolute. It is not to be tempered or watered down. It must be done, and done now.

² In its application to us for a stay pending appeal, counsel for the School Board relied heavily on *Northeross v. Board of Education of Memphis*, — —F.2d — — (6th Cir. 1970), as a judicial ruling that school assignments based on residence are constitutionally immune. The defendant tendered us a statistical comparison of pupil enrollment by school with pupil population by attendance area for the Memphis school system.

Since then the Supreme Court in *Northcross* has ruled that the Court of Appeals erred insofar as it held that the Memphis board "is not now operating a 'dual school system' * * * ." 38 L.W. 4219.

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II

THE COURT-ORDERED PLAN

A. *The Necessity of the Court-Ordered Plan*

The plan ordered by the District Court works. It does the job of desegregating the schools completely. This "places a heavy burden upon the board to explain its preference for an apparently less effective method." *Green, supra* at 439.

The most significant fact about the District Court's plan is that it—or one like it—is the only one that can work. Obviously, when the black students are all on one side of town, the whites on the other, only transportation will bring them together. The District Judge is quite explicit:

Both Dr. Finger and the school board staff appear to have agreed, and the court finds as a fact that for the present at least, there is no way to desegregate the all-black schools in Northwest Charlotte without providing (and continuing to provide) bus or other transportation for thousands of children. All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion.

The point has been perceived by the counsel for the Board, who have candidly informed us that if the job must be done then the Finger plan is the way to do it.

The only suggestion that there is a possible alternative middle course came from the United States, participating as *amicus curiae*. Its brief was prefaced by the following revealing confession:

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We understand that the record in the case is voluminous, and we would note at the outset that we have been unable to analyze the record as a whole. Although we have carefully examined the district court's various opinions and orders, the school board's plan, and those pleadings readily available to us, we feel that we are not conversant with all of the factual considerations which may prove determinative of this appeal. Accordingly, we here attempt, not to deal extensively with factual matters, but rather to set forth some legal considerations which may be helpful to the Court.

Nowwithstanding this disclaimer, the Government went on to imply in oral argument—and has apparently impressed on this court—that HEW could do better. No concrete solution is suggested but the Government does advert to the possibility of pairing and grouping of schools. Two points stand out. First, pairing and grouping are precisely what the Finger plan, adopted by the District Court, does. Second, in the circumstances of this case, these methods necessarily entail bussing.

I am not "favorably impressed" by the Government's performance. Its vague and noncommittal representations do little but obscure the real issues, introduce uncertainty and fail to meet the "heavy burden" necessary to overturn the District Court's effective plan.³

³ A federal judge is not required to consult with the Department of Health, Education and Welfare on legal issues. What is the constitutional objective of a plan, and whether a unitary system has been or will be achieved, are questions for the court. HEW's interpretation of the constitutional command does not bind the courts.

[W]hile administrative interpretation may lend a persuasive gloss to a statute, the definition of constitutional standards

*Opinions of Court of Appeals dated May 26, 1970***B. *The Feasibility of the Plan***

Of course it goes without saying that school boards are not obligated to do the impossible. Federal courts do not joust at windmills. Thus it is proper to ask whether a plan is feasible, whether it can be accomplished. There is no genuine dispute on this point. The plan is simple and quite efficient. A bus will make one pickup in the vicinity of the children's residences, say in the white residential area. It then will make an express trip to the inner-city school. Because of the non-stop feature, time can be considerably shortened and a bus could make a return trip to pick up black students in the inner city and to convey them to the outlying school. There is no evidence of insurmountable traffic problems due to the increased

controlling the actions of states and their subdivisions is peculiarly a judicial function.

Bowman v. County School Board of Charles City County, 382 F.2d 326 (1967).

Although the definition of goals is for the court, HEW may be able to provide technical assistance in overcoming the logistical impediments to the desegregation of a school system. Thus it was quite understandable that at the outset of this case the District Court invited the Board to consult with HEW. Desegregation of this large educational system was likely to be a complex and administratively difficult task, in which the expertise of the federal agency might be of help. However, after a substantial period of time and the beginning of a new school year, it became clear that the Board had no intention of devising a meaningful plan, much less seeking advice on how to do so. At that point (December 1969) with the need for speed in mind, the Judge appointed an expert already familiar with the school system to work with the school staff in developing a plan.

Whether to utilize the assistance of HEW is ordinarily up to the district judge. Consultation in formulating the mechanics of a plan is not obligatory. The method used by the Judge in this case was certainly sufficient. Moreover, now that a plan has been created and it appears that there are no real alternatives, a remand for HEW's advice seems an exercise in futility.

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bussing.⁴ Indeed, straight line bussing promises to be quicker. The present average one-way trip is over 15 miles and takes one hour and fourteen minutes; under the plan the average one-way trip for elementary students will be less than seven miles and 35 minutes. The cost of all of the additional bussing will be less than one week's operating budget.⁵

C. The Standard of Review

In *Brown II*, the Supreme Court charged the district courts with the enforcement of the dictates of *Brown I*.

⁴ The only indication I have encountered that a serious traffic problem will be occasioned by the additional bussing is found in an affidavit by the City Director of Traffic Engineering. His statement is based on the exaggerated bus estimate prepared by the Board and rejected by the District Court. See note 5, *infra*. Moreover, he appears to have relied to a large extent on the erroneous assumption that under the plan busses would pick up and discharge passengers along busy thoroughfares, thus causing "stop-and-go" traffic of slow moving school busses in congested traffic."

A later affidavit of the same official, filed at the request of the District Court, affords more substantial data. It reveals that the total estimated number of automobile trips per day in Charlotte and Mecklenburg County (not including internal truck trips) is 869,604. That the 138 additional busses would gravely aggravate the congestion is dubious, to say the least.

⁵ The District Judge rejected the Board's inflated claims, and found that altogether the Finger plan would bus 13,300 new students in 138 additional busses. The Board had estimated that 19,285 additional pupils would have to be transported, requiring 422 additional busses. This estimate is disproportionate on its face, for presently 23,600 pupils are transported in 280 busses. As indicated above, the direct bus routes envisioned by the Finger plan should accomplish increased, not diminished, efficiency. The court below, after close analysis, discounted the Board's estimate for other reasons as well, including the "very short measurements" used by the Board in determining who would have to be bussed, the failure of the Board to account for round-trips, staggering of opening and closing hours, and overloads.

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The lower courts were to have "a practical flexibility in shaping * * * remedies." 349 U.S. at 300. Thus, in assuming these cases under traditional equity principles, the Supreme Court brought the desegregation decree within the rule that to be overturned it "must [be] demonstrate[d] that there was no reasonable basis for the District Judge's decision." *United States v. W. T. Grant Co.*, 345 U.S. 629, 634 (1953). This court has paid homage to this maxim of appellate review when, in the past, a district Judge has ordered less than comprehensive relief. *Bradley v. School Board of the City of Richmond*, 345 F.2d 310, 320 (1965), *rev'd*, 382 U.S. 103 (1965). What is called for here is similar deference to an order that would finally inter the dual system and not preserve a nettlesome residue. As the Supreme Court made clear in *Green*, *supra*, those who would challenge an effective course of action bear a "heavy burden." The Finger plan is a remarkably economical scheme when viewed in the light of what it accomplishes. There has been no showing that it can be improved or replaced by better or more palatable means. It should, then, be sustained.

III

OBJECTIONS RAISED AGAINST THE COURT-ORDERED PLAN

A. *The "Illegal" Objective of the Plan*

My Brother Bryan expresses concern about the plan, regardless of cost, because it undertakes, in his view, an illegal objective: "achieving racial balance." Whatever might be said for this view abstractly or in another context, it is not pertinent here. We are confronted in this case with no question of bussing for mere balance unrelated to

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a mandatory constitutional goal. What the District Court has ordered is compliance with the constitutional imperative to disestablish the existing segregation. Unless we are to palter with words, desegregation necessarily entails integration, that is to say integration in some substantial degree. The dictum to the contrary in *Briggs v. Elliott*, 132 F. Supp. 776 (E.D.S.C. 1955), was rejected by necessary implication by the Supreme Court in *Green, supra*, and explicitly by this court in *Walker v. County School Board of Brunswick Co.*, 413 F.2d 53, 54 n.2 (4th Cir. 1969).

As my Brother Winter shows, there is no more suitable way of achieving this task than by setting, at least initially, a ratio roughly approximating that of the racial population in the school system. The District Judge adopted this *ad hoc* measurement as a starting guide, expressed a willingness to accept a degree of modification,⁶ and departed from it where circumstances required.

B. The "Unreasonableness" of the Plan

The majority does not quarrel with the plan's objective, nor, accepting the findings of the District Court, does it really dispute that the plan can be achieved. Rather, we are told, the plan is an unreasonable burden.

⁶ The District Judge wrote in his December 1 order that

Fixed ratios of pupils in particular schools will not be set. If the board in one of its three tries had presented a plan for desegregation, the court would have sought ways to approve variations in pupil ratios. In default of any such plan from the school board, the court will start with the thought, originally advanced in the order of April 23, that efforts should be made to reach a 71-29 ratio in the various schools so that there will be no basis for contending that one school is racially different from the others, but to understand that variations from that norm may be unavoidable.

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This notion must be emphatically rejected. At bottom it is no more than an abstract, unexplicated judgment—a conclusion of the majority that, all things considered, desegregation of this school system is not worth the price. This is a conclusion neither we nor school boards are permitted to make.

In making policy decisions that are not constitutionally dictated, state authorities are free to decide in their discretion that a proposed measure is worth the cost involved or that the cost is unreasonable, and accordingly they may adopt or reject the proposal. This is not such a case. Vindication of the plaintiffs' constitutional right does not rest in the school board's discretion, as the Supreme Court authoritatively decided sixteen years ago and has repeated with increasing emphasis. It is not for the Board or this court to say that the cost of compliance with *Brown* is "unreasonable."

That a subjective assessment is the operational part of the new "reasonableness" doctrine is highlighted by a study of the factors the majority bids school boards take into account in making bussing determinations. "[A] school board should take into consideration the age of the pupils, the distance and time required for transportation, the effect on traffic, and the cost in relation to the board's resources." But, as we have seen, distance and time will be comparatively short, the effect on traffic is undemonstrated, the incremental cost is marginal. As far as age is concerned, it has never prevented the bussing of pupils in Charlotte-Mecklenburg, or in North Carolina generally, where 70.9% of all bussed students are elementary pupils.

If the transportation of elementary pupils were a novelty sought to be introduced by the District Court, I could understand my brethren's reluctance. But, as is conceded,

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bussing of children of elementary school age is an established tradition. Bussing has long been used to perpetuate dual systems.⁷ More importantly, bussing is a recognized educational tool in Charlotte-Mecklenburg and North Carolina. And as the National Education Association has admirably demonstrated in its brief, bussing has played a crucial role in the evolution from the one-room schoolhouse in this nation. Since the majority accepts the legitimacy of bussing, today's decision totally baffles me.

In the final analysis, the elementary pupil phase of the Finger plan is disapproved because the percentage increase in bussing is somehow determined to be too onerous.⁸ Why this is so we are not told. The Board plan itself would bus 5,000 additional pupils. The fact remains that in North Carolina 55% of all pupils are now being bussed. Under the Finger plan approximately 47% of the Charlotte-Mecklenburg student population would be bussed. This is well within the existing percentage throughout the state.

The majority's proposal is inherently ambiguous. The

⁷ For some extreme examples, see: *School Board of Warren County v. Kelly*, 259 F.2d 497 (4th Cir. 1958); *Corbin v. County School Bd. of Pulaski County*, 117 F.2d 924 (4th Cir. 1949); *Griffith v. Bd. of Educ. of Yancey County*, 186 F. Supp. 511 (W.D.N.C. 1960); *Gains v. County School Bd. of Grayson County*, 186 F. Supp. 753 (W.D.a. 1960), *stay denied*, 282 F.2d 343 (4th Cir. 1960). *See also*, *Chambers v. Iredell Co.*, — F.2d — (4th Cir. 1970) (dissenting opinion).

⁸ The majority calculates the elementary school portion of the plan to mean a 39% increase in bussed pupils, 32% increase in busses; the whole package, it is said, would require a 56% pupil increase and 49% bus increase.

These figures are accurate but do not tell the whole story. If one includes within the number of students presently being transported those that are bussed on commercial lines (5000), the increase in pupils transported would not appear to be as large. Thus the plan for elementary schools would entail a 33% bussed pupil increment, the whole Finger plan, 47%.

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court-ordered plan is said to be unreasonable. Yet the School Board's own plan has also been disapproved. Does the decision—that the Finger plan is unreasonable—depend on the premise that an intermediate course is available? Would the amount of segregation retained in the School Board's plan be avowedly sanctioned if it were recognized that nothing short of the steps delineated in the District Court's plan will suffice to eliminate it? Since there is no practicable alternative, must we assume that the majority is willing to tolerate the deficiencies in the Board plan?

These questions remain unresolved and thus the ultimate meaning of the "reasonableness" doctrine is undefined. Suffice it to say that this case is not an appropriate one in which to grapple with the theoretical issue whether the law can endure a slight but irreducible remnant of segregated schools. This record presents no such problem. The remnant of racially identifiable elementary schools, to which the District Court addressed itself, encompasses over half the elementary population. This large fraction cannot be called slight; nor, as the Finger plan demonstrates, is it irreducible.

I am even more convinced of the unwisdom of reaching out to fashion a new "rule of reason," when this record is far from requiring it, because of the serious consequences it would portend for the general course of school desegregation. Handed a new litigable issue—the so-called reasonableness of a proposed plan—school boards can be expected to exploit it to the hilt. The concept is highly susceptible to delaying tactics in the courts. Everyone can advance a different opinion of what is reasonable. Thus, rarely would it be possible to make expeditious disposition of a board's claim that its segregated system is not "reasonably" eradicable. Even more pernicious, the new-born rule furnishes a powerful incentive to communities to perpetuate and

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deepen the effects of race separation so that, when challenged, they can protest that belated remedial action would be unduly burdensome.

Moreover, the opinion catapults us back to the time, thought passed, when it was the fashion to contend that the inquiry was not how much progress had been made but the presence or absence of good faith on the part of the board. Whether an "intractable remnant of segregation" can be allowed to persist, apparently will now depend in large measure on a slippery test: an estimate of whether the Board has made "every reasonable effort to integrate the pupils under its control."

⁹ Both in its characterization of the facts and in its treatment of the case the majority implies that the actions of this Board have been exemplary. I feel constrained to register my dissent from this view although on no account do I subscribe to the proposition that the disposition of the case depends on this issue.

On April 23, 1969 the District Judge declared the Charlotte-Mecklenburg School District illegally segregated. He found it unnecessary at that time to decide whether the Board had deliberately gerrymandered to perpetuate the dual system since he believed that the court order to follow would promote substantial changes. The Board was given until May 15 to devise a plan eliminating faculty and student segregation.

A majority of the Board voted not to take an immediate appeal and the school superintendent was directed to prepare a plan. His mandate was hazy. According to the court below—

No express guidelines were given the superintendent. However, the views of many members expressed at the meeting were so opposed to serious and substantial desegregation that everyone including the superintendent could reasonably have concluded, as the court does, that a "minimal" plan was what was called for, and that the "plan" was essentially a prelude to anticipated disapproval and appeal.

• • • • •

The staff were never directed to do any serious work on re-drawing of school zone lines, pairing of schools, combining zones, grouping of schools, conferences with the Department of Health, Education and Welfare, nor any of the other

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The Supreme Court having barred further delay by its insistent emphasis on an immediate remedy, we should not lend ourselves to the creation of a new loophole by attenuating the substance of desegregation.

possible methods of making real progress towards desegregation.

The superintendent's plan was submitted to the Board on May 8. It was quite modest in its undertaking. Nevertheless, the Board "struck out virtually all the effective provisions of the superintendent's plan." The plan ultimately filed by the Board on May 28 was "the plan previously found racially discriminatory with the addition of one element—the provision of transportation for [majority to minority transfers.]" The Board also added a rule making a student who transfers to a new high school ineligible for athletics for a year. As the District Judge found,

[t]he effect of the athletic penalty is obvious—it discriminates against black students who may want to transfer and take part in sports, and is no penalty on white students who show no desire for such transfers.

In the meantime the Board for the first time refused to accept a recommendation of the superintendent for the promotion of a teacher to principal. The reason avowed was that the teacher, who was black and a plaintiff in the suit, had publicly expressed his agreement with the District Court order. The job was withheld until the prospective appointee signed a "loyalty oath."

The District Judge held a hearing on June 16 and ruled on June 20. He declined to find the Board in contempt but did note that "[t]he board does not admit nor claim that it has any positive duty to promote desegregation." The Judge also returned to the issue of gerrymandering and found "a long standing policy of control over the makeup of school population which scarcely fits any true 'neighborhood school philosophy.'"

On July 29, the Board returned with a new plan. The District Judge was pleased to learn that "the School Board has reversed its field and has accepted its affirmative constitutional duty to desegregate pupils, teachers, principals and staff members 'at the earliest possible date.'" In view of this declaration and of the late date, the court "reluctantly" approved for one year only a plan whereby seven all black inner-city schools would be closed and a total of 4245 black children bussed to outlying white schools.

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Albert V. Bryan, Circuit Judge, dissenting in part:

The Court commands the Charlotte-Mecklenburg Board of Education to provide bussing of pupils to its public schools for "achieving integration". (Accent added.) "[A]chieving integration" is the phraseology used, but actually, achieving racial *balance* is the objective. Bussing

The Board was directed to file a plan for complete desegregation in November.

By November, the District Judge was able to survey the results achieved under the plan adopted for the year. He found that "only 1315 instead of the promised 4245 black pupils" had been transferred. (Later information revealed that the number was only 767.) Furthermore, he found that

The Board has indicated that its members do not accept the duty to desegregate the schools at any ascertainable time; and they have clearly indicated that they intend not to do it effective in the fall of 1970. They have also demonstrated a yawning gap between predictions and performance.

On November 17, the Board filed a plan. It "discarded further consideration of pairing, grouping, clustering and transporting." Ostensibly "to avoid 'tipping,'" the plan provided that white students would not be assigned schools where they would find themselves with less than 60% whites. This was, as the District Court found, a one-way street in view of the fact that the plan contemplated no effort to desegregate schools with greater than 40% blacks. The plan also dropped the earlier provision of transportation for students transferring out of segregated situations. Thus the Board nullified the one improvement it had made in its May 8 plan. It also left those black students who had transferred to outlying schools pursuant to the July 29 plan without transportation. Understandably, the court labeled this "re-segregation."

In the face of this total lack of cooperation on the part of the Board, the court was compelled to appoint an expert to devise a plan for desegregation. The Finger plan was the result.

It appears from the record that on most issues the Board was sharply divided. Of course I mean to cast no aspersions on those members—and there were some—who urged the Board forthrightly to shoulder its duty. But the above recital of events demonstrates beyond doubt that this Board, through a majority of its members, far from making "every reasonable effort" to fulfill its constitutional obligation, has resisted and delayed desegregation at every turn.

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to prevent racial imbalance is not as yet a Constitutional obligation. Therefore, no matter the prior or present utilization of bussing for this or other reasons, and regardless of cost considerations or duplication of the bus routes, I think the injunction cannot stand.

Without Constitutional origin, no power exists in the Federal courts to order the Board to do or not to do anything. I read no authority in the Constitution, or in the implications of *Brown v. Board of Education*, 347 US 483 (1954), and its derivatives, requiring the authorities to endeavor to apportion the school bodies in the racial ratio of the whole school system.

The majority opinion presupposes this racial balance, and also bussing to achieve it, as Constitutional imperatives, but the Chief Justice of the United States has recently suggested inquiry on whether "any particular racial balance must be achieved in the schools; . . . [and] to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court." See his memorandum appended to *Northcross v. Board of Education of the Memphis, Tennessee, City Schools*, — US —, 38 USLW 4219, 4220 (March 9, 1970).*

Even construed as only incidental to the 1964 Civil Rights Act, this legislation in 42 United States Code § 2000c-6 is necessarily revealing of Congress' hostile attitude toward the concept of achieving racial balance by bussing. It unequivocally decried in this enactment "any order [of a Federal court] seeking to achieve a racial balance in any

* On remand the District Court in *Northcross* has held there was no Constitutional obligation to transport pupils to overcome a racial imbalance. *Northcross v. Board of Education of the Memphis City Schools*, — FS — (W.D.Tenn., May 1, 1970) (per McRae, J.). In the same Circuit, see, too, *Deal v. Cincinnati Board of Education*, 419 F2d 1387 (6 Cir. 1969).

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school by requiring the transportation of pupils or students from one school to another . . . to achieve such racial balance”

I would not, as the majority does, lay upon Charlotte-Mecklenburg this so doubtfully Constitutional ukase.

WINTER, Circuit Judge, concurring in part and dissenting in part:

I would affirm the order of the district court in its entirety.*

In a school district in which freedom of choice has patently failed to overcome past state policy of segregation and to achieve a unitary system, the district court found the reasons for failure. They included resort to a desegregation plan based on geographical zoning with a free transfer provision, rather than a more positive method of achieving the constitutional objective, the failure to integrate faculties, the existence of segregated racial patterns partially as a result of federal, state and local governmental action and the use of a neighborhood concept for the location of schools superimposed upon a segregated residential pattern. Correctly the majority accepts these findings under established principles of appellate review. To illustrate how government-encouraged residential segregation, coupled with the discriminatory location and design of schools, resulted in a dual system, the majority demonstrates that in this locality busing has been employed as a tool to perpetuate segregated schools.

* Certainly, if the district court's order with respect to high schools and junior high schools is affirmed, the district court should not be invited to reconsider its order with respect to them. The jurisdiction of the district court is continuing and it may always modify its previous orders with respect to any school upon application and for good cause shown.

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In complete compliance with *Carter v. West Feliciana School Board*, — U. S. — (1970); *Alexander v. Holmes County Bd. of Ed.*, — U. S. — (1969); *Green v. School Bd. of New Kent County*, 391 U. S. 430 (1968), and *Monroe v. Bd. of Comm'rs.*, 391 U. S. 450 (1968), the majority concludes that the existing high school and junior high school system must be dismantled and that the constitutional mandate can be met by the use of geographical assignment, including satellite districts and busing.

The majority thus holds that the Constitution requires that this dual system be dismantled. It indicates its recognition of the need to overcome the discriminatory educational effect of such factors as residential segregation. It also approves the use of zones, satellite districts and resultant busing for the achievement of a unitary system at the high school and junior high school levels. Nevertheless, the majority disapproves a similar plan for the desegregation of the elementary schools on the ground that the busing involved is too onerous. I believe that this ground is insubstantial and untenable.

At the outset, it is well to remember the seminal declaration in *Brown v. Board of Education (Brown II)*, 349 U. S. 294, 300 (1955), that in cases of this nature trial courts are to "be guided by equitable principles" in "fashioning and effectuating decrees." Since *Brown II* the course of decision has not departed from the underlying premise that this is an equitable proceeding, and that the district court is invested with broad discretion to frame a remedy for the wrongful acts which the majority agrees have been committed. In *Green v. School Board of New Kent County*, 391 U. S. at 438, the Supreme Court held that the district courts not only have the "power" but the "duty to render a decree which will, so far as possible, eliminate the dis-

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criminatory effects of the past, as well as bar like discrimination in the future." District courts were directed to "retain jurisdiction until it is clear that disestablishment has been achieved." *Raney v. Board of Education*, 391 U. S. 443, 449 (1968). Where it is necessary district courts may even require local authorities "to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system." *Griffin v. School Board*, 377 U. S. 218, 233 (1964). Thus, the Supreme Court has made it abundantly clear that the district courts have the power, and the duty as well, to fashion equitable remedies designed to extirpate racial segregation in the public schools. And in fashioning equitable relief, the decree of a district court must be sustained unless it constitutes a clear abuse of discretion. *United States v. W. T. Grant Co.*, 345 U. S. 619 (1953).

Busing is among the panoply of devices which a court of equity may employ in fashioning an equitable remedy in a case of this type. The district court's order required that "transportation be offered on a uniform non-racial basis to all children whose attendance in any school is necessary to bring about reduction of segregation, and who lives farther from the school to which they are assigned than the Board determines to be walking distance." It found as a fact, and I accept its finding, that "there is no way" to desegregate the Charlotte schools in the heart of the black community without providing such transportation.

The district court's order is neither a substantial advance nor extension of present policy, nor on this record does it constitute an abuse of discretion. This school system, like many others, is now actively engaged in the business of transporting students to school. Indeed, busing is a widespread practice in the United States. U. S. Commission on

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Civil Rights, *Racial Isolation in the Public Schools* 180 (1967). Between 1954 and 1967 the number of pupils using school transportation has increased from 9,509,699 to 17,271,718. National Education Association, National Commission on Safety Education, *1967-68 Statistics on Pupil Transportation* 3.

Given its widespread adoption in American education, it is not surprising that busing has been held an acceptable tool for dismantling a dual school system. In *United States v. Jefferson County Board of Education*, 380 F.2d 385, 392 (5 Cir.) (en banc), cert. den. sub. nom. *Caddo Parrish School Bd. v. United States*, 389 U. S. 840 (1967), the court ordered that bus service which was "generally provided" must be routed so as to transport every student "to the school to which he is assigned" provided that the school "is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules." Similarly, in *United States v. School Dist. 151*, 286 F. S. 786, 799 (N.D. Ill. 1968), aff'd., 404 F.2d 1125 (7 Cir. 1968), the court said that remedying the effects of past discrimination required giving consideration to "racial factors" in such matters as "assigning students" and providing transportation of pupils. In addition, the Eighth Circuit in *Kemp v. Beasley*, — F.2d — (8 Cir. 1970), recognized that busing is "one possible tool in the implementation of unitary schools." And, finally, *Griffin v. School Board*, supra, makes it clear that the added cost of necessary transportation does not render a plan objectionable.

I turn, then, to the extent and effect of busing of elementary school students as ordered by the district court.

Presently, 23,600 students—21% of the total school population—are bused, excluding some 5,000 pupils who travel to and from school by public transportation. The school

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board operates 280 buses. The average cost of busing students is \$39.92 per student, of which one-half is borne by the state and one-half by the board. Thus, the average annual cost to the board is about \$20.00 per student. The total annual cost to the board for busing is approximately \$500,000.00 out of a total operating budget of \$51,000,000.00. The cost of busing is thus less than 1% of the total operating budget and an even smaller percentage of the \$57,700,000.00 which this school district expends on the aggregate of operations, capital outlay and debt service and this cost also represents less than 2% of the local funds which together with state and federal money constitute the revenue available annually to the school board.

The total number of elementary school pupils presently bused does not appear, but under the district court's order an additional 9,300 elementary school pupils would be bused. The additional operating cost of busing them would not exceed \$186,000.00 per year. They would require not more than 90 additional buses, and the buses would require an additional capital outlay of \$486,000.00. The increased operating cost of the additional elementary school pupils required to be bused amounts to less than 1% of the board's school budget, and the one-time capital outlays for additional buses amounts to less than 1% of the board's total budget. The combined operational and capital cost represents less than 1.2% of the board's total budget. I am, therefore, unable to see how the majority could consider the additional cost unbearable.

Perhaps more importantly, the tender years of elementary school students requires a consideration of the impact of the district court's order on the average student. While this board transports 21% of the total school population, it is providing transportation to a far lower per-

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centage of pupils than the average North Carolina school board. In North Carolina 54.9% of the average daily attendance in the public schools was transported by bus during the 1968-69 school year.

The average distance traveled by elementary school pupils presently bused does not appear, but the district court found overall with respect to the children required to be bused by its order that they "will not as a group travel as far, nor will they experience more inconvenience than the more than 28,000 children who are already being transported * * *." While the district court did not make separate findings with regard to the average length of travel for the additional elementary school pupils required to be bused, it did find that the average one-way bus trip in the system today is over 15 miles in length and takes nearly an hour and a quarter. In contrast, the court found that under its plan the average one-way trip for elementary school students would be less than 7 miles and would require not over thirty-five minutes.

When I consider that busing has been widely used in this system to perpetuate segregation, that some busing was proposed even under the unacceptable board plans, that the cost of additional busing to the system as required by the court's order, both in absolute terms and in relation to its total expenditures is so minimal, and that the impact on the elementary school pupils is so slight, I discern no basis for concluding that the district court abused its discretion with respect to the elementary school.

Two other aspects of the majority's opinion require my comment.

First, the majority attempts to answer the query of the Chief Justice in his separate opinion in *Northcross v. Board*

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of *Ed. of Memphis*, — U. S. — (1970), as to whether “any particular racial balance must be achieved in the schools” by holding “that not every school in a unitary school system need be integrated * * *.” To me, the holding is premature and unwise. There is not in this case either the intractable problem of a vast urban ghetto in a large city or any substantial basis on which it may be said that the cost or the impact on the system or on the pupils of dismantling the dual system is insupportable.

The district court wisely attempted to remedy the present dual system by requiring that pupil assignment be based “as nearly as practicable” on the racial composition of the school system, 71% white and 29% black. The plan ordered fell short of complete realization of this remedial goal. While individual schools will vary in racial composition from 3% to 41% black, most schools will be clustered around the entire system’s overall racial ratio. It would seem to follow from *United States v. Montgomery Board of Education*, 395 U. S. 225, 232 (1968), that the district court’s utilization of racial ratios to dismantle this dual system and remedy the effects of segregation was at least well within the range of its discretion. There the Supreme Court approved as a requirement of faculty integration that “in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system.” It did so recognizing that it had previously said in *New Kent County*, 391 U. S. at 439, “[t]here is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance.” If in a proper case strict application of a ratio is an approved device to achieve faculty integration, I know of no reason

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why the same should not be true to achieve pupil integration, especially where, as here, some wide deviations from the overall ratio have been permitted to accommodate circumstances with respect to particular schools.

In addition to *Montgomery*, the same conclusion can be deduced from the mandate of *West Feliciana* and *Holmes County* to dismantle immediately a dual system. Schools cease to be black or white when each reflects the overall pupil racial balance of the entire system. What imbalances may be justified after a unitary system has once been established, and what departures from an overall pupil racial balance may be permitted to accommodate special circumstances in the establishment of a unitary system, should be developed on a case-by-case basis and the facts of record which each case presents.

The other aspect of the majority's opinion which troubles me greatly is its establishment of the test of reasonableness. My objections to this test do not spring from any desire to impose unreasonable, irrational or onerous solutions on school systems; I, too, seek "reasonable" means with which to achieve the constitutionally required objective of a unitary system.

My objections are two-fold.

First, this is an inappropriate case in which to establish the test. On this record it cannot be said that the board acted reasonably or that there is any viable solution to the dismantling of the dual system other than the one fashioned by the district court. Neither the board nor HEW has suggested one. So that, again, I think the majority is premature in its pronouncement and I would find no occasion to discuss reasonableness when there is no choice of remedies.

Second, the majority sets forth no standards by which to judge reasonableness or unreasonableness. The majority

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approves the district court's plan as to high schools and junior high schools, yet disapproves as to elementary schools. The only differences are increased busing with attendant increased cost, time and distance. The majority subjectively concludes that these costs are too great to permit the enforcement of the constitutional right to a unitary system. I would find them neither prohibitive nor relatively disproportionate. But, with the absence of standards, how are the school boards or courts to know what plans are reasonable? The conscientious board cannot determine when it is in compliance. The dilatory board receives an open invitation to further litigation and delay.

Finally, I call attention to the fact that "reasonableness" has more than faint resemblance to the good faith test of *Brown II*. The 13 years between *Brown II* and *New Kent County* amply demonstrate that this test did not work. Ultimately it was required to be rejected and to have substituted for it the absolute of "now" and "at once." The majority ignores this lesson of history. If a constitutional right exists, it should be enforced. On this record the constitutional rights of elementary school pupils should be enforced in the manner prescribed by the district court, because it is clear that the district court did not abuse its discretion.

Judge Sobeloff authorizes me to say that he joins in these views.

**Judgment of Court of Appeals
dated May 26, 1970**

This cause came on to be heard on the record from the United States District Court for the Western District of North Carolina, and was argued by counsel.

On consideration whereof, it is ORDERED and ADJUDGED that the judgment of the District Court appealed from, in this case, be, and the same is hereby, vacated; and the case is remanded to the United States District Court for the Western District of North Carolina, at Charlotte, for further proceedings.

Judge Bryan joins Haynsworth, C.J. and Boreman, J. in voting to vacate the judgment of the District Court, and to remand the case in accordance with the opinion written by Butzner, J. He does so for the sake of creating a clear majority for the decision to remand. It is his hope that upon reexamination the District Court will find it unnecessary to contravene the principle stated in Judge Bryan's dissent herein, to which he still adheres. *Screws v. United States*, 325 US 91, 135 (1945).

By direction of the Court.

SAMUEL W. PHILLIPS
Clerk

**Order of Three-Judge District Court
dated April 29, 1970**

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Civil No. 1974

JAMES E. SWANN, et al.,

Plaintiffs,

versus

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, a public body corporate; WILLIAM E. POE; HENDERSON BELK; DAN HOOD; BEN F. HUNTLEY; BETSEY KELLY; COLEMAN W. KERRY, JR.; JULIA MAULDEN; SAM McNINCH, III; CARLTON G. WATKINS; THE NORTH CAROLINA STATE BOARD OF EDUCATION, a public body corporate; and DR. A. CRAIG PHILLIPS, Superintendent of Public Instruction of the State of North Carolina,

Defendants,

and

HONORABLE ROBERT W. SCOTT, Governor of the State of North Carolina; HONORABLE A. C. DAVIS, Controller of the State Department of Public Instruction; HONORABLE WILLIAM K. McLEAN, Judge of the Superior Court of Mecklenburg County; TOM B. HARRIS; G. DON ROBERSON; A. BREECE BRELAND; JAMES M. POSTELL; WILLIAM E. RORIE, JR.; CHALMERS R. CARR; ROBERT T. WILSON; and the CONCERNED PARENTS ASSOCIATION, an unincorporated association in Mecklenburg County; JAMES CARSON and WILLIAM H. BOOE,

Additional Parties-Defendant.

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Civil No. 2631

MRS. ROBERT LEE MOORE, *et al.*,

Plaintiffs,

versus

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION and WILLIAM
C. SELF, Superintendent of Charlotte-Mecklenburg
Public Schools,

Defendants.

THREE-JUDGE COURT

(Heard March 24, 1970

Decided April 29, 1970.)

Before CRAVEN and BUTZNER, Circuit Judges, and Mc-
MILLAN, District Judge.

CRAVEN, Circuit Judge:

This three-judge district court was convened pursuant to 28 U.S.C. § 2281, et seq. (1964), to consider a single aspect of the above-captioned case: the constitutionality and impact of a state statute, N. C. Gen. Stat. § 115-176.1 (Supp. 1969), known as the antibussing law, on this suit brought to desegregate the Charlotte-Mecklenburg school system. We hold a portion of N. C. Gen. Stat. § 115-176.1 unconstitutional because it may interfere with the school board's performance of its affirmative constitutional duty under the equal protection clause of the Fourteenth Amendment.

I.

On February 5, 1970, the district court entered an order requiring the Charlotte-Mecklenburg School Board to de-

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segregate its school system according to a court-approved plan. Implementation of the plan could require that 13,300 additional children be bussed.¹ This, in turn, could require up to 138 additional school buses.²

Prior to the February 5 order, certain parties filed a suit, entitled *Tom B. Harris, G. Don Roberson, et al. v. William C. Self, Superintendent of Charlotte-Mecklenburg Schools and Charlotte-Mecklenburg Board of Education*, in the Superior Court of Mecklenburg County, a court of general jurisdiction of the State of North Carolina. Part of the relief sought was an order enjoining the expenditure of public funds to purchase, rent or operate any motor vehicle for the purpose of transporting students pursuant to a desegregation plan. A temporary restraining order granting this relief was entered by the state court, and, in response, the *Swann* plaintiffs moved the district court to add the state plaintiffs as additional parties defendant in the federal suit, to dissolve the state restraining order, and to direct all parties to cease interfering with the federal court mandates. Because it appeared that the constitutionality of N. C. Gen. Stat. § 115-176.1 (Supp. 1969) would be in question, the district court requested designation of this three-judge court on February 19, 1970. On February 25, 1970, the district judge granted the motion to add additional parties. Meanwhile, on February 22, 1970, another state suit, styled *Mrs. Robert Lee Moore, et al. v. Charlotte-*

¹ On March 5, 1970, the Fourth Circuit Court of Appeals stayed that portion of the district court's order requiring bussing of students pending appeal to the higher court.

² There is a dispute between the parties as to the additional number of children who will be bussed and as to the number of additional buses that will be needed. For our purposes, it is immaterial whose figures are correct. The figures quoted are taken from the district judge's supplemental findings of fact, filed March 21, 1970.

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Mecklenburg Board of Education and William C. Self, Superintendent of Charlotte-Mecklenburg Schools, was begun. In this second state suit, the plaintiffs also requested an order enjoining the school board and superintendent from implementing the plan ordered by the district court on February 5. The state court judge issued a temporary restraining order embodying the relief requested, and on February 26, 1970, the *Swann* plaintiffs moved to add Mrs. Moore, *et al.*, as additional parties defendant in the federal suit. On the same day, the state defendants filed a petition for removal of the *Moore* suit to federal court. On March 23, 1970, the district judge requested a three-judge court in the removed *Moore* case, and this panel was designated to hear the matter. All the cases were consolidated for hearing, and the court heard argument by all parties on March 24, 1970.

II.

N. C. Gen. Stat. § 115-176.1 (Supp. 1969) reads:

Assignment of pupils based on race, creed, color or national origin prohibited.—No person shall be refused admission into or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a

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specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

The provisions of this article shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit.

It is urged upon us that the statute is far from clear and may reasonably be interpreted several different ways.

(A) Plaintiffs read the statute to mean that the school board is prevented from complying with its duty under the Fourteenth Amendment to establish a unitary school system. See, *e.g.*, *Green v. County School Bd. of New Kent County*, 391 U.S. 430, 439 (1968). In

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support of this contention, plaintiffs argue that the North Carolina General Assembly passed § 115-176.1 in response to an April 23, 1969, district court order, which required the school board to submit a plan to desegregate the Charlotte schools for the 1969-70 school year. Under plaintiffs' interpretation of the statute, the board is denied all desegregation tools except non-gerrymandered geographic zoning and freedom of choice. Implicit in this, of course, is the suggestion that zoning and freedom of choice will be ineffective in the Charlotte context to disestablish the asserted duality of the present system.

(B) The North Carolina Attorney General argues that the statute was passed to preserve the neighborhood school concept. Under his interpretation, the statute prohibits assignment and bussing inconsistent with the neighborhood school concept. Thus, to disestablish a dual system the district court could, consistent with the statute, *only* order the board to geographically zone the attendance areas so that, as nearly as possible, each student would be assigned to the school nearest his home regardless of his race. Implicit in this argument is that any school system is *per se* unitary if it is zoned according to neighborhood patterns that are not the result of officially sanctioned racial discrimination. Although the Attorney General emphasizes the expression of state policy by the Legislature in favor of the neighborhood school concept, he recognizes, of course, that the statute also permits freedom of choice if a school board voluntarily adopts such a plan. Thus, the plaintiffs and the Attorney General read the statute in much the same way: that it limits lawful methods of accomplishing desegregation

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to nongerrymandered geographic zoning and freedom of choice.

(C) The school board's interpretation of the statute is more ingenious. The board concedes that the statute prohibits assignment according to race, assignment to achieve racial balance, and involuntary bussing for either of these purposes, but contends that the facial prohibitions of the statute only apply to prevent a school board from doing more than necessary to attain a unitary system. The argument is that since the statute only begins to operate once a unitary system has been established, it in no way interferes with the board's constitutional duty to desegregate the schools. Counsel goes on to insist that Charlotte-Mecklenburg presently has a unitary system and, therefore, that the state court constitutionally applied the statute to prevent further unnecessary racial balancing.

(D) Plaintiffs in the *Harris* suit contend (1) that in 42 U.S.C. §§ 2000c(b) and 2000c-6(a)(2) (1964)³

³ § 2000c:

As used in this subchapter—

* * * * *

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

§ 2000c-6(a):

(2) [P]rovided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

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Congress expressly prohibited assignment and bussing to achieve racial balance, (2) that to compel a child to attend a school on account of his race or to compel him to be involuntarily bussed to achieve a racial balance violates the principle of *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954), and (3) that N. C. Gen. Stat. § 115-176.1 merely embodies the principle of the neighborhood school in accordance with *Brown* and the Civil Rights Act of 1964. We may dispose of the first contention at once. The statute "cannot be interpreted to frustrate the constitutional prohibition [against segregated schools]." *United States v. School Dist. 151 of Cook Co.*, 404 F.2d 1125, 1130 (7th Cir. 1968).

(E) Plaintiffs in the *Moore* suit argue that the district court order of February 5, 1970, was in contravention of *Brown* and, therefore, that the state court order in their suit was justified. However, the *Moore* plaintiffs also argue that certain parts of the second and third paragraphs in the state statute are unconstitutional because they give the school board the authority to assign children to schools for whatever reasons the board deems necessary or sufficient. The *Moore* plaintiffs interpret these portions of the statute as permitting assignment and bussing on the basis of race contrary to *Brown* and the Fourteenth Amendment.

III.

Federal courts are reluctant, as a matter of comity and respect for state legislative judgment and discretion, to strike down state statutes as unconstitutional, and will not do so if the statute reasonably can be interpreted so as not

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to conflict with the federal Constitution. But to read the statute as innocuously as the school board suggests would, we think, distort and twist the legislative intent. We agree with plaintiffs and the Attorney General that the statute limits the remedies otherwise available to school boards to desegregate the schools. The harder question is whether the limitation is valid or conflicts with the Fourteenth Amendment. We think the question is not so easy, and the statute not so obviously unconstitutional, that the question may lawfully be answered by a single federal judge, see *Turner v. City of Memphis*, 369 U.S. 350 (1962); *Bailey v. Patterson*, 369 U.S. 31 (1962), and we reject plaintiffs' attack upon our jurisdiction. *Swift & Co. v. Wickham*, 382 U.S. 111 (1965); C. Wright, *Law of Federal Courts* § 50 at 190 (2d ed. 1970).

In *Green v. County School Bd. of New Kent Co.*, 391 U.S. 430 (1968), the Supreme Court declared that a school board must take effective action to establish a unitary, non-racial system, if it is not already operating such a system. The Court neither prohibited nor prescribed specific types of plans, but, rather, emphasized that it would judge each plan by its ultimate effectiveness in achieving desegregation. In *Green* itself, the Court held a freedom-of-choice plan insufficient because the plan left the school system segregated, but stated that, under the circumstances existing in New Kent County, it appeared that the school board could achieve a unitary system either by simple geographical zoning or by consolidating the two schools involved in the case. 391 U.S. at 442, n. 6. Under *Green* and subsequent decisions, it is clear that school boards must implement plans that work to achieve unitary systems. *Northcross v. Bd. of Ed. of the Memphis City Schools*, — U.S. —, 38 L.W. 4219 (1970); *Alexander v. Holmes*

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Co. Bd. of Ed., 396 U.S. 19 (1969). Plans that do not produce a unitary system are unacceptable.⁴

We think the enunciation of policy by the legislature of the State of North Carolina is entitled to great respect. Federalism requires that whenever it is possible to achieve a unitary system within a framework of neighborhood schools, a federal court ought not to require other remedies in derogation of state policy. But if in a given fact context the state's expressed preference for the neighborhood school cannot be honored without preventing a unitary system, it is the former policy which must yield under the Supremacy Clause.

Stated differently, a statute favoring the neighborhood school concept, freedom-of-choice plans, or both can validly limit a school board's choice of remedy only if the policy favored will not prevent the operation of a unitary system. That it may or may not depends upon the facts in a particular school system. The flaw in this legislation is its rigidity. As an expression of state policy, it is valid. To the extent that it may interfere with the board's perfor-

⁴ The reach of the Court's mandate is not yet clear:

[A]s soon as possible . . . we ought to resolve some of the basic practical problems when they are appropriately presented including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court.

Northcross v. Bd. of Ed. of the Memphis City Schools, — U.S. —, 38 L.W. at 4220 (1970) (Chief Justice Burger, concurring). For our purposes, it is sufficient to say that the mandate applies to require "reasonable" or "justifiable" solutions. See generally Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 Harv. L. Rev. 564 (1965).

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mance of its affirmative constitutional duty to establish a unitary system, it is invalid.

The North Carolina statute, analyzed in light of these principles, is unconstitutional in part. The first paragraph of the statute reads:

No person shall be refused admission into or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

There is nothing unconstitutional in this paragraph. It is merely a restatement of the principle announced in *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954) (*Brown I*).

The third paragraph of the statute reads:

The provisions of this article shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or circumstances which, in the sole discretion of the school board, require assignment or reassignment.

This paragraph merely allows the school board noninvidious discretion to assign students to schools for valid administrative reasons. As we read it, it does not relate to race at all and, so read, is constitutional.

The fourth paragraph provides:

The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis

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of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit.

This paragraph relieves school boards from compliance with the statute where they are implementing voluntarily adopted freedom-of-choice plans within their systems. It does not require the boards to adopt freedom of choice in any particular situation, but leaves them free to comply with their constitutional duty by any effective means available, including, where it is appropriate, freedom of choice. So interpreted, the paragraph is constitutional.

The second paragraph of the statute contains the constitutional infirmity. It reads:

Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students

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in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

The first sentence of the paragraph presents no greater constitutional problem than the third and fourth paragraphs of the statute, discussed above. It allows school boards to establish a geographically zoned neighborhood school system, but it does not require them to do so. Consequently, this sentence does not prevent the boards from complying with their constitutional duty in circumstances where zoning and neighborhood school plans may not result in a unitary system. The clause in the first sentence permitting assignment for "any other reason" in the board's "sole discretion" we read as meaning simply that the school boards may assign outside the neighborhood school zone for noninvidious administrative reasons. So read, it presents no difficulty. The second and third sentences are unconstitutional. They plainly prohibit school boards from assigning, compelling, or involuntarily bussing students on account of race, or in order to racially "balance" the school system. *Green v. School Bd. of New Kent Co.*, 391 U.S. 430 (1968), *Brown v. Bd. of Ed. of Topeka*, 349 U.S. 294 (1955) (*Brown II*), and *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954) (*Brown I*), require school boards to consider race for the purpose of disestablishing dual systems.

The Constitution is not color-blind with respect to the affirmative duty to establish and operate a unitary school system. To say that it is would make the constitutional principle of *Brown I* and *II* an abstract principle instead of an operative one. A flat prohibition against assignment by race would, as a practical matter, prevent school boards from altering existing dual systems. Consequently, the statute clearly contravenes the Supreme Court's direction

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that boards must take steps adequate to abolish dual systems. See *Green v. School Bd. of Kent Co.*, 391 U.S. 430, 437 (1968). As far as the prohibition against racial "balance" is concerned, a school board, in taking affirmative steps to desegregate its systems, must always engage in some degree of balancing. The degree of racial "balance" necessary to establish a unitary system under given circumstances is not yet clear, see *Northcross v. Bd. of Ed. of the Memphis City Schools*, — U.S. —, 38 L.W. at 4220 (1970) (Chief Justice Burger concurring), but because any method of school desegregation involves selection of zones and transfer and assignment of pupils by race, a flat prohibition against racial "balance" violates the equal protection clause of the Fourteenth Amendment. Finally, the statute's prohibition against "involuntary bussing" also violates the equal protection clause. Bussing may not be necessary to eliminate a dual system and establish a unitary one in a given case, but we think the Legislature went too far when it undertook to prohibit its use in all factual contexts. To say that bussing shall not be resorted to unless unavoidable is a valid expression of state policy, but to flatly prohibit it regardless of cost, extent and all other factors—including willingness of a school board to experiment—contravenes, we think, the implicit mandate of *Green* that all reasonable methods be available to implement a unitary system.

Although we hold these statutory prohibitions unconstitutional as violative of equal protection, it does not follow that "bussing" will be an appropriate remedy in any particular school desegregation case. On this issue we express no opinion, for the question is now on appeal to the United States Court of Appeals for the Fourth Circuit and is not for us to decide.

Order of Three-Judge District Court dated April 29, 1970

It is clear that each case must be analyzed on its own facts. See *Green v. School Bd. of New Kent Co.*, 391 U.S. 430 (1968). The legitimacy of the solutions proposed and ordered in each case must be judged against the facts of a particular school system. We merely hold today that North Carolina may not validly enact laws that prevent the utilization of any reasonable method otherwise available to establish unitary school systems. Its effort to do so is struck down by the equal protection clause of the Fourteenth Amendment and the Supremacy Clause (Article 2 of the Constitution).

V

As we have no cause to doubt the sincerity of the various defendants, the plaintiffs' motion to hold them in contempt for interference with the district court's orders and their request for an injunction against enforcement of the statute will be denied. We believe the defendants, including the state court plaintiffs, will, pending appeal, respect this court's judgment, which applies statewide with respect to the constitutionality of the statute.

Several of the parties have moved to be dismissed from the case, alleging various grounds in support of their motions. Because of the view we take of this suit and the limited relief we grant, the motions to dismiss become immaterial. The school board is undeniably a proper party before the court on the constitutional issue, since it is a party to the desegregation suit. We can, therefore, consider and adjudge the validity of the statute, regardless of the position of the other parties. That we consider the substantive arguments of all the parties in no way harms those who have moved to be dismissed.

An appropriate judgment will be entered in accordance with this opinion.

Order Granting Certiorari

June 29, 1970

The motion of the National Education Association for leave to file a brief, as *amicus curiae*, is granted. The motion of the United Negro College Fund, Inc., et al., for leave to file a brief, as *amici curiae*, is granted. The petition for a writ of certiorari is granted, provided that the order of the Court of Appeals is left undisturbed and the case is remanded to the district court for further proceedings, which further proceedings are authorized if the district court's judgment is reinstated and shall have effect pending those proceedings. The decision on the petition to expedite is deferred. Mr. Justice Blackman, from the Court's order which reinstates the district court's judgment. He would grant the motion to expedite this Court and set the case for hearing at the earliest possible date.

Supreme Court of the United States

No. 1713 -----, October Term, 19 69

James E. Swann, et al.,

Petitioners,

v.

Charlotte-Mecklenburg Board of
Education, et al.

ORDER ALLOWING CERTIORARI. Filed June 29 -----, 1970.

The petition herein for a writ of certiorari to the United States Court of

Appeals for the Fourth ----- Circuit is granted, provided that the judgment of the Court of Appeals is left undisturbed insofar as it remands the case to the district court for further proceedings, which further proceedings are authorized, and the district court's judgment is reinstated and shall remain in effect pending those proceedings. The decision on the motion to expedite is deferred.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black dissents from the Court's order which reinstates the district court's judgment. He would grant the motion to expedite action in this Court and set the case for hearing at the earliest possible date.

Supreme Court of the United States

No 49 , *October Term, 19 70*

**Charlotte-Mecklenburg Board of Education,
et al.,**
Petitioners,

v.

James E. Swan, et al.

ORDER ALLOWING CERTIORARI. Filed October 6 , **19 70.**

The petition herein for a writ of certiorari to the United States Court of Appeals for the **Fourth** . Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.